# This Is a Farewell Gift

## From CA Kishan Sir for Law

Fully amended for May / Nov 21

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# CHAPTER 1 – PRELIMINARY

## UNIT- II: NATURE OF COMPANY

### 1. PRACTICAL QUESTIONS

**Concept Problem 1 [*May 2008] [Sec 9]***

ABC Pvt. Ltd. is a private limited company having five members only. All the members of the Company were going to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons under the Companies Act, 2013 whether existence of the company has also come to the end.

**Solution**

**Death of all members of a Private Limited Company, Under the Companies Act, 2013:**
The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetual succession to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law.

Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

**Concept Problem 2 *[June 2009] [Sec 9]***

F, an Assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three private companies and agreed with each to hold a block of investment as an agent for it. The dividend and interest income received by the company was handed back to F as a pretended loan. This way, F divided his income into three parts in a bid to reduce his tax liability.

Decide for what purpose three companies were established? Whether the legal personality of all the three companies may be disregarded?

**Solution**

As decided in the case of Salomon Vs Salomon & Co. Ltd., a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. The rights and liabilities of a Company is separate from its members or owners. This is known as corporate veil.

But under certain circumstances the corporate veil may be lifted and separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate Assessee.

a) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the Assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the Assessee himself. Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

b) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the Assessee as pretended loans. The same was upheld in Re Sir Dinshaw Maneckji Petit AIR 1927 Bom.371.

**Concept Problem 3 *[RTP Nov 2019]***

Red Limited was incorporated on 1st April, 2014 is facing severer effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation.

**Answer**

According to section 3A of the Companies Act, 2013, If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Hence, in the given situation, the number of member in the said public company have fallen below 7 [250-244=6] and these members have continued beyond the specified limit of 6 months, the reduced members of the company during the period of 1 month shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

| **Concept Problem 4** | **[Nov 2009] [May 2014] *[Sec 464]*** |
|---|---|
| The XYZ Traders Associations were constituted by four joint Hindu Families consisting of 60 major and 10 minor members. The association was carrying on the business of trading as retailers with the object for acquisition of gains. The association was not registered as a company under the Companies Act, 2013 or any other law. State whether the XYZ Traders Association is having any legal status?<br>Will there be any change in the status of this association if the members of the XYZ Traders Association subsequently were reduced to 40?<br>**Or**<br>The United Traders Association was constituted by two Joint Hindu Families consisting of 51 major and 5 minor members. The association was carrying the business of trading as retailers with the object for acquisition of gain. The association was not registered as a company under the Companies Act 2013 or any other law.<br>State whether United Traders Association is having any legal status? Will there be any change in the status of this association if the members of the United Traders Association is subsequently reduced to 45. | |
| **XYZ Traders Association is illegal association** | - Since the number of adult members exceeds 50. |
| **Effects of subsequent reduction in numbers of members** | - Would not make any change in the status of XYZ Traders association since an illegal association continues to be an illegal association even though subsequently the number of members is reduced below 50. |

## 2. True or False

State whether the following are True or False and give reasons (1 Mark each):

| | | |
|---|---|---|
| **1** | **Nov. 2011** | A company is a legal person but not a citizen.<br>**Ans.** The given statement is true.<br>**Reason:** Citizenship under the Citizenship Act is available only to an individual. Therefore, no company can be a citizen of India. |
| **2** | **May 2014** | The concept of legal personality of a company is of absolute nature.<br>**Ans.** The given statement is false. |

| | | |
|---|---|---|
| | | **Reason:** In certain case, the separate identity (i.e., corporate personality or legal personality) of a company is ignored, termed as lifting of corporate veil. |

## 3. QUESTIONS FOR PRACTICE

**1)** Explain clearly the concept of perpetual succession and common seal in relation to a company incorporated under the Company's Act, 2013. **[May 2004] [May 2011]**

**2)** Some of the creditors of M/s Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context, they seek your advice regarding the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company. **[Nov 2004]**

**3)** Define the term free reserves as contained in the Companies Act, 2013. **[Nov 2014]**

**4)** Explain what is meant by "Financial statement" as per the Companies Act, 2013? **[Nov 2014]**

# ARISE AWAKE AND STOP NOT TILL YOUR GOAL IS ACHIEVED

*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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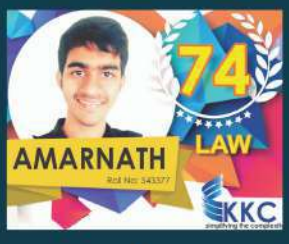




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# CHAPTER 2
# INCORPORATION OF COMPANY & MATTERS INCIDENTAL THERETO
## UNIT- I : KINDS OF COMPANY

## 1. PRACTICAL PROBLEMS

**Concept Problem 1** ***[ICAI SM] [MTP Nov 2018] [MTP May 2019]***

Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

**Solution**

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

a) The Central Government may by order **revoke the licence** of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and **opportunity to be heard** in the matter.

b) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be **wound up** under this Act or **amalgamated** with another company registered under this section.

However, no such order shall be made unless the company is given a **reasonable opportunity** of being heard.

c) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be **amalgamated** with another company registered under this section and having **similar objects**, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

**Concept Problem 2** ***[ICAI SM] [RTP Nov 2019]***

S Ltd. is a company in which H Ltd. is holding 60% of its paid-up share capital. One of the shareholders of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. And INR 50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold share in its holding company in this way?

**Answer**

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

a. where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

b. where the subsidiary company holds such shares as a trustee; or

c. where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S Ltd. can hold shares in H Ltd.

**Concept Problem 3 *[ICAI SM]***

Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

| | | |
|---|---|---|
| (a) | Directors and their relatives | 50 |
| (b) | Employees | 15 |
| (c) | Ex-Employees (Shares were allotted when they were employees) | 10 |
| (d) | 5 couples holding shares jointly in the name of husband and wife (5*2) | 10 |
| (e) | Others | 145 |

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

**Answer**

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that -

(A) persons who are in the employment of the company; and
(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members.

In the instant case, Flora Fauna Limited may be converted* into a private company only if the total members of the company are limited to 200. Total Number of members

| | | |
|---|---|---|
| (i) | Directors and their relatives | 50 |
| (ii) | 5 Couples (5*1) | 5 |
| (iii) | Others | 145 |
| | **Total** | **200** |

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

**Concept Problem 4 *[ICAI SM] [MTP May 2019] [RTP May 2019] [MTP Nov 2020]***

New, a One Person company (OPC) was incorporated during the year 2015-16 with an authorised capital of Rs. 45 lakhs (4.5 lakhs shares of Rs. 10 each). The capital was fully subscribed and paid up. Turnover of the company during 2015-16 and 2016-17 was Rs. 2 crores and Rs. 2.5 crores respectively. Promoter of the company seeks your advice in the following circumstances, whether New (OPC) can convert into any other kind of company during 2017-18. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:

a) If promoter increases the paid-up capital of the company by Rs. 10 lakhs during 2017-18.

b) If turnover of the company during 2017-18 was Rs. 3 crores.

**Solution**

As per Rule 3 of *the Companies (Incorporation) Rules, 2014*, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the Chapter II of the Act.

According to the above provisions, following are the answers to the given circumstances:

a) Where, if the promotors increase the paid-up capital of the company by Rs. 10.00 lakh during 2017-2018 i.e., to Rs. 55 lakhs (45+10= 55), 'New' (OPC) may convert itself voluntarily into any other kind of company due to increase in the paid-up share capital exceeding 50 lakh rupees. This could be done by the 'New' by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.

b) Where if the turnover of the 'New' during 2017-18 was Rs. 3.00 crore, there will be no change in the answer, as it meets up the requirement of minimum turnover i.e., Rs. 2 crores for voluntarily conversion of 'New' (OPC) into any other kind of company.

**Concept Problem 5 *[ICAI SM] [ICAI May 2019] [MTP Nov 2020]***

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act, 2013.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

**Answer**

According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

a. has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

b. intends to apply its profits, if any, or other income in promoting its objects; and

c. intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over

the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects.

Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

**Concept Problem 6 *[RTP May 2018] [RTP May 2019]***

The paid-up share capital of Saras Private Limited is INR 1 crore, consisting of 8 lacs Equity Shares of INR 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of INR 10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited.

With reference to the provisions of the Companies Act, 2013, examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

**Solution**

In terms of section 2 (87) of the Companies Act 2013, "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

a) controls the composition of the Board of Directors; or
b) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this clause

a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total voting power. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

**Concept Problem 7 *[MTP Nov 2018]***

Give answer in the following cases as per the Companies Act, 2013

i) X Ltd., holds 20 lacs shares in ABZ Ltd. In 2017, ABZ Ltd. controls the composition of the Board of directors of X Ltd. and transfers certain shares to it. State whether such transfer of shares by ABZ Ltd. to X Ltd. is valid.

ii) In continuation of above facts, Mr. R, is a member of the ABZ Ltd. He met an accident. Mr. N (son of Mr. R), is one of the directors of the X Ltd. He was also a nominee of shares held by Mr. R. Being a legal representative and nominee, Mr. N gets transferred the shares of Mr. R. State on the validity of the transfer of such shares to Mr. N of X Ltd.

**Solution**

As per section 2(84) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd.

Further, section 19 of the companies Act provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its

subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that this sub-section shall not apply-

a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

b) where the subsidiary company holds such shares as a trustee; or

c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

On the basis of the above provisions, following are the answers:

i) In the given case, X ltd. already holds shares in ABZ Ltd. before becoming its subsidiary. The given situation falls within the purview of the exceptions when such transfer of shares by holding company to its subsidiary is permissible. Hence, this transfer of shares by ABZ Ltd. to X Ltd. is valid.

ii) This situation falls within the purview of exemption stating that such subsidiary company who holds such shares as the legal representative of a deceased member of the holding company, are entitled to hold the shares of the holding company. So Mr. N being the legal representative of the deceased member of the Holding company, was entitled for the holding of shares of ABZ Ltd.

**Concept Problem 8** ***[ICAI May 2018] [MTP Nov 2020]***

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid Up Share Capital of INR 45 lakh and turnover of INR 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

i) Whether the MNP Private Ltd. can avail the status of small company.

ii) What will be your answer if the turnover of the company is INR 1.50 crore?

**Solution**

**Small Company:** According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,

1. paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

2. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than hundred crore rupees

Nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

**(i)** In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid-up share capital of INR 45 lakh and having turnover of INR 3 crore. Since only one criteria of share capital of INR 50 Lakhs is met, but the second criteria of turnover of INR 2 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

**(ii)** If the turnover of the company is INR 1.50 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

**Concept Problem 9** ***[ICAI May 2019]***

As at 31st March, 2018, the paid-up share capital of S Ltd. is INR 1,00,00,000 divided into 10,00,000 equity shares

of INR 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd.

On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?

ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?

iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

**Answer**

The paid-up share capital of S Ltd. is INR 1,00,00,000 divided into 10,00,000 equity shares of INR 10 each. Of this, H Ltd. is holding 6,00,000 equity shares.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of section 2(87) of the Companies Act, 2013.

In the instant case,

i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

ii) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

**Concept Problem 10** ***[ICAI Nov 2008] [ICAI Nov 2019]***

Teresa Ltd. Is a company registered in New York (U.S.A)? The company has no place of business established in India, but it is doing online business through data interchange and tele marketing in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as foreign company.

**Answer**

According to section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which, -

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. conducts any business activity in India in any other manner.

As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term "**electronic mode**", means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;

ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

iii) Financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and

v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the given question, Teresa Ltd. will be treated as a foreign company within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.

**Concept Problem 11** ***[ICAI Nov 2019]***

Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

(A) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(B) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

**Answer**

As per Rule 3 & 4 of the Companies (Incorporation) Rules, 2014 following the answers:

(A) Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

(B) Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

**Concept Problem 12 [May 1996] [May 2000] [June 2009] [Nov 2017]*[Sec 2(46 and 2(87)]***

The paid-up share capital of AVS Pvt. Ltd. is INR 1 crore consisting of 8 lacs equity shares of INR. 10 each, fully paid-up and 2 lacs cumulative preference shares of INR 10 each, fully paid-up. XYZ Pvt. Ltd. and BCL Pvt. Ltd. are holding 3 lacs equity shares and 1,50,000 equity shares respectively in AVS Pvt. Ltd.
XYZ Pvt. Ltd. and BCL Pvt. Ltd. are the subsidiaries of TSR Pvt. Ltd. With reference to the provisions of the Companies Act 2013, examine whether AVS Private Limited is a subsidiary of TSR Pvt. Ltd. Would your answer be difference if TSR Pvt. Ltd. has 8 out of total 10 directors on the Board of Directors of AVS Private Limited?

**or**

The paid-up share capital of ABC Private Limited is INR one crore consisting of 80,00,000 equity shares of INR 10 each and 2,00,000 cumulative preference shares of INR 10 each both fully paid up. PQR Pvt. Ltd. and MNO Pvt. Ltd. are holding 3,00,000 equity shares and 1,50,000 equity shares respectively in ABC Pvt. Ltd. PQR Pvt. Ltd. and MNO Pvt. Ltd. are the subsidiaries of UMC Pvt. Ltd.
Examine with reference to the provision of the Companies Act, 2013, whether ABC Pvt. Ltd. is a subsidiary of UMC Pvt. Ltd. Would your answer be different if UMC Pvt. Ltd. controls the composition of Board of Directors of ABC Pvt. Ltd.

**Or**

The paid-up share capital of SAB Private Limited is INR 1 crore, consisting of 8 lacs Equity Shares of INR 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of INR 10 each, fully paid-up. JVN Private Limited and SARA Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in SAB Private Limited. JVN Private Limited and SARA Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether SAB Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of SAB Private Limited?

**Or**

The paid-up share capital of XYZ (Private) Company Limited is INR 20 lakhs consisting of 2,00,000 equity shares of INR 10 each fully paid up. ABC (Private) Limited and its subsidiary DEF (Private) Limited are holding 60,000 and 50,000 shares respectively in XYZ (Private) Company Limited.
Examine with reference to the provisions of the Companies Act, 2013 whether XYZ (Private) Company Limited is a subsidiary of ABC (Private) Limited.

Would your answer be different if DEF (Private) Limited is holding 1,10,000 shares in XYZ (Private) Company Limited and no shares are held by ABC (Private) Limited in XYZ (Private) Company Limited?

**Or**

The paid-up share capital of Advanced Casting Private Ltd. is INR one crore consisting of 8,00,000 equity shares of INR 10 each fully paid up and INR 2,00,000 cumulative preference shares of INR 10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt Ltd are holding 3,00,000 equity shares and 1,50,000 equity shares respectively in Advanced Castings Private Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are the subsidiaries of Unique Machineries Pvt. Ltd. Examine with reference to the provisions of the Companies Act, 2013 whether Advanced Casting Private Ltd is a subsidiary of Unique Machineries Pvt. Ltd.

Will your answer be different if Unique Machineries Pvt. Ltd controls the composition of Board of Directors of Advanced Castings Private Ltd?

| | |
|---|---|
| **Total ESC of AVS Pvt. Ltd.** | - is INR 80,00,000 |
| **ESC held by XYZ. Pvt. Ltd. in AVS Pvt. Ltd.** | - is INR 30,00,000<br>- |
| **ESC held by BCL Pvt. Ltd. in AVS Pvt. Ltd.** | - is INR 15,00,000 |
| **ESC held by TSR Pvt. Ltd. in AVS Pvt. Ltd.** | - is INR 45,00,000 since for the purpose of determining holding subsidiary relationship, ESC i.e. voting power held in AVS Ltd. by its subsidiaries XYZ Pvt. Ltd. (viz., INR 30,00,000) and BCL Pvt. Ltd. (viz. INR 15,00,000) shall be considered |
| **AVS Pvt. Ltd. is a subsidiary of TSR Pvt. Ltd.** | - Since TSR Pvt. Ltd. holds more than one half of ESC i.e. voting power of AVS Pvt. Ltd. |
| **Answer would remain same** | - Even if TSR Pvt. Ltd. has 8 out of 10 directors on the Board of Directors of AVS Pvt. Ltd. since in such a case TSR Pvt. Ltd. controls the composition of Board of Directors of AVS Pvt. Ltd. |

## 2. Past Year Questions for Practice

**1)** State the conditions of restrictions with which private company are incorporated under the Companies Act, 2013. **[Nov 2003]**

**2)** Define the term "Small Company" as contained in the Companies Act, 2013. **[May 2015]**

**3)** What is meant by a guarantee company? State the similarities and dissimilarities between a guarantee company and a company having share capital. **[Nov 2004]**

**4)** Explain the concept "Dormant Company" as envisaged in the Companies Act, 2013. **[May 2016]**

**5)** Explain the provisions of the Companies Act, 2013 relating to registration of a non-profit organisation as a company. What is required to be adopted for the said purpose. **[May 2004]**

**6)** State the documents and information for registration of One Person Company required to be filed with Registrar of Companies. **[May 2016]**

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*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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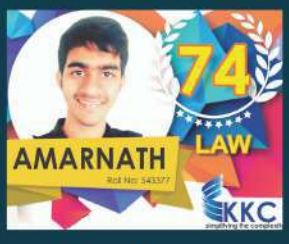




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# CHAPTER 2
# INCORPORATION OF COMPANY & MATTERS INCIDENTAL THERETO
## UNIT- II INCORPORATION

## 1. PRACTICAL QUESTIONS

| **Concept Problem 1** | **[Nov 2007] *[Sec 15 and 19]*** |
|---|---|
| Sunrise Limited submitted the documents for incorporation on 5th October 2014. It was incorporated and certificate of incorporation of the company was issued by the registrar on 20th October 2014. The company, on 14th October 2014 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide under the provisions of the Companies Act, 2013 whether the company can be exempted from the said contractual liability. | |
| **The company is not bound by the contract entered into on 14.10.2014** | - Since a pre-incorporation contract is not binding on the company as the company was not in existence when such contract was entered into.<br>- Thus, the company is exempted from the said liability. |
| **However, the company shall be bound by the contract entered into on 14.10.2014 if** | - The company, after incorporation has adopted the pre-incorporation contract in accordance with the provisions of sec 15 and 19 of Specific Relief Act, 1963. |

| **Concept Problem 2** | **[Nov 2001] [May 2013] *[Sec 15 and 19]*** |
|---|---|
| K Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the supplies of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of the above furniture. As a result, supplier sued the promoters of the company for the recovery of money.<br>Examine whether promoters can be held liable for the payment under the following situations:<br>a) When the company has already adopted the contract after incorporation?<br>b) When the company makes a fresh contract with the suppliers in substitution of pre-incorporation contract? | |
| **If the company adopts the contract after incorporation** | - The company shall be liable for the payment of furniture used by it.<br>- The promoters shall not be personally liable. |
| **If the company makes a fresh contract** | - The answer shall remain same as in (i) above. |

| **Concept Problem 3** | **[May 2008] [Nov 2003] *[Sec 15 and 19]*** |
|---|---|
| Before the incorporation of the company, the promoters of the company entered into an agreement with Mr. Jainson to buy an immovable property on behalf of the company. After incorporation, the company refused to buy the said property. Advise Mr. Jaison whether he has any remedy under the provision of the Companies Act, 2013. | |
| **Mr. Jainson has no remedy against the company** | Mr. Jainson has no remedy against the company<br>- since a pre-incorporation contract is not binding on the company as the company was not in existence when such contract was entered into.<br>- unless the company, after incorporation, has adopted the pre- incorporation contract in accordance with the provision of sec. 15 and 19 of Specific Relief Act, 1963. |
| **Mr. Jainson may hold the promoters liable** | for any loss incurred by him, since if a pre-incorporation is not adopted by the company after incorporation, the promoters are personally liable. |

**Concept Problem 42 *[ICAI Nov 2019]***

Mahima Ltd. was incorporated by furnishing false informations. As per the Companies Act, 2013, state the powers of

the Tribunal (NCLT) in this regard.

**Answer**

Order of the Tribunal: According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

b) direct that liability of the members shall be unlimited; or

c) direct removal of the name of the company from the register of companies; or

d) pass an order for the winding up of the company; or

e) pass such other orders as it may deem fit.

However before making any order-

i. the company shall be given a reasonable opportunity of being heard in the matter; and

ii. the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

## 2. QUESTIONS FOR PRACTICE

**1)** Who shall be considered as promoter according to the definition given in the Companies Act, 2013? Explain. **[Nov 2014]**

**2)** What is meaning of "Certificate of Incorporation" under the provisions of the Companies Act, 2013? **[May 2006]**

**3)** Mr. Ram Lal and his friend desire to incorporate a public company and approach you for help. Advice. **[May 2007]**

**4)** Mr. V, along with six other persons, desires to float a company for charitable purpose as permissible under section 8 of the Companies Act, 2013. He seeks your advice about the procedure to be followed to give effect to the above proposal. Advise him. **[Nov 2007]**

**5)** Which documents are required to be filed with the registrar of companies at the time of registration of a company under the provisions of the Companies Act, 2013? **[May 2011]**

**6)** What do you understand by pre-incorporation contracts? **[May 2004]**

**7)** What is meant by pre- incorporation contract? Can these contracts be enforced by the prospective company after its incorporation against the third parties with whom the promoters had entered into certain contracts? Explain. **[Nov 2007]**

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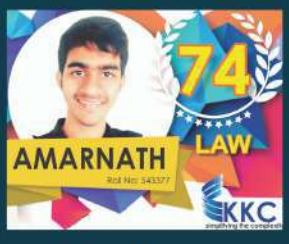




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# CHAPTER 2
# INCORPORATION OF COMPANY & MATTERS INCIDENTAL THERETO
## UNIT- III: MEMORANDUM & ARTICLES

## 1. PRACTICAL QUESTIONS

**Concept Problem 1** ***[ICAI SM]***

The Directors of a company registered and incorporated in the name "Mars TextileIndia Ltd." desire to change the name of the company entitled "National Textiles and Industries Ltd." Advise as to what procedure is required to be followed under the Companies Act, 2013?

**Solution**

**Change in the name of company:** In the first instance, Mars Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. National Textiles and Industries Ltd. is available or not. For this purpose, the company should file the prescribed Form No. INC.24 with the Registrar along with the necessary fees. The Registrar after examination will inform whether the new name is available or not for registration.

In case the name is available, the company has to pass a special resolution approving the change of name to National Textiles and Industries Ltd.

Thereafter the approval of the Central Government should be obtained as provided in Section 13(2) of the Companies Act, 2013. The power of Central Government in this regard has been delegated to the Registrar of Companies. Thus, the company has to file an application along with the prescribed filing fee for change of name.

The change of name shall be complete and effective only on the issue of a fresh certificate of incorporation by the Registrar. The Registrar shall enter the new name in the Register in place of the former name13(3). The change of name shall not affect any rights or obligations of the company and it shall not render defective any legal proceedings by or against it.

**Concept Problem 2** ***[ICAI SM] [MTP May 2019] [MTP Nov 2019]***

XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.

**Solution**

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, **does not result in the alteration of the Memorandum** and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company. Further, presuming that the Registrar will remain the same for the whole state of Maharashtra, there will be no need for the company to seek the confirmation to such change from the Regional Director.

**Concept Problem 3** ***[ICAI SM]***

RSP Limited, with a limited liability of its members by guarantee of INR 10 lac to each member. The company increases the liability of the members from INR 10 lac to 15 lakhs by an alteration made in the liability clause of the Memorandum of Association. Referring to the provisions of the Companies Act, 2013 decide, whether the members of the company are liable for the increased liability.

**Solution**

The limitation of liability is an essential clause in the Memorandum and on registration of the company becomes binding on all present and future members.

The present question states that the liability of the members has been increased by the company without clarifying the mode. The company can act only through its Board of Directors or through its members. The Board of Directors do not have the authority to alter the clause; hence it means that the alteration was approved by the members at a general meeting.

However, section 13 of the Act which deals with the alteration of the Memorandum does not provide for the alteration of its liability clause. Hence, the liability of members cannot be altered once the company is formed. The alteration in the given question is therefore invalid.

**Concept Problem 4 *[ICAI SM]***

The Articles of Association of a Limited Company provided that 'X' shall be the Law Officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though he was not guilty of misconduct. Decide, whether company's action is valid?

**Solution**

Section 5 (1) of the Companies Act, 2013 states that the Articles of a company contain the regulations for the management of a company. Further section 5 (2) provides that the Articles of a company shall contain all matters that are prescribed under the Act and also such additional matters as may be considered necessary for the management of the company.

**Removal of Law Officer:** The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same [Section 10(1)].

However, the company and members are not bound to outsiders in respect of anything contained in memorandum/articles by which such outsiders have been given any rights. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract.

In this case, Articles conferred a right on 'X', the law officer that he shall not be removed except on the ground of proved misconduct. In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company. Hence the action taken by the company (i.e. removal of 'X' even though he was not guilty of misconduct) is valid.

However, by altering the Articles by a special resolution under section 14 of the Act and Mr. X can be removed.

**Concept Problem 5 *[ICAI SM] [ICAI May 2016]***

The object clause of the Memorandum of Vivek Industries Ltd., empowers it to carry on real- estate business and any other business that is allied to it. Due to a downward trend in real- estate business the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its object's clause. Examine whether the company can make such change as per the provisions of the Companies Act, 2013?

**Answer**

**Alteration of Objects Clause of Memorandum**

The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under section 13(1) of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, Section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company. Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been **registered with the Registrar** as above.

Hence, the Companies Act, 2013 permits any alteration to the object's clause with ease. Vivek Industries Ltd. can make the required changes in the object clause of its Memorandum of Association.

**Concept Problem 6 *[ICAI SM]***

Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

**Answer**

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by

a) registered post or
b) by speed post or
c) by courier service or
d) by leaving it at its registered office or
e) by means of such electronic or
f) other mode as may be prescribed.

However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the **registrar** in **electronic mode**, a document may be served on Registrar or any **member** by sending it to him by **post** or by **registered post** or by **speed post** or by **courier** or by **delivering at his office or address**, or by such **electronic or other mode** as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

**Concept Problem 7 *[ICAI SM] [RTP May 2020]***

Yadav dairy products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. One of the directors said that they cannot make a provision against the Companies Act. You are required to advise the company on this matter.

**Answer**

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions or entrenchment, whether made on formation or by amendment, the Company shall give notice to the Registrar of such provisions in the prescribed manner.

In the present case, Yadav dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.

**Concept Problem 8 *[ICAI SM]***

Anushka security equipments limited is a manufacturer of CCTV cameras. It has raised INR 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.

Does the Companies Act allow such change of object? If not, then what advise will you give to company. If yes, then give steps to be followed.

**Answer**

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision, we can say that Company can add the object app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

**Concept Problem 9 *[ICAI SM]***

Manglu and friends got registered a company in the name of Taxmann Advisory Private Limited. Taxmann is a registered trade mark. After 5 years, when the owner of trade mark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trade mark? Can the owner of registered trade mark request the company and then company changes its name at its discretion?

**Answer**

According to section 16 of the Companies Act, 2013 if a company is registered by a name which:

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.

- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 6 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to

change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trade mark requests, the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of sec 13.

**Concept Problem 10 *[ICAI SM]***

Shri Laxmi Electricals Ltd. (S) is a company in which Hanuman Power Suppliers Limited (H) is holding 60% of its paid-up share capital. One of the shareholders of H made a charitable trust and donated his 10% shares in H and 50 crores to the trust. He appoints S as the trustee. All the assets of the trust are held in the name of S. Can a subsidiary hold share in its holding company in this way?

**Answer**

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
b) where the subsidiary company holds such shares as a trustee; or
c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S can hold shares in H.

**Concept Problem 11 *[ICAI SM]***

Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been singing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firoz bhai. Mr. Parag signed partnership deed with Firoz bhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?

**Answer**

As per section 22 of the Companies Act ,2013, a company may authorize any persons as its attorney to execute deeds on its behalf in any place either in or outside India .But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

In the present case company has not neither given any written authority not affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

**Concept Problem 12 *[ICAI SM] [RTP Nov 2020]***

Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide:

a) Whether the contention of Vijay is valid.

b) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?

**Answer**

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

a) The contention of Vijay shall be tenable, for the reason that the notice was not properly served.

b) In the given circumstances, the company is bound to serve a valid notice to Vijay by registered post at his residential address at Kanpur and not outside India.

**Concept Problem 13** ***[ICAI May 2012] [ICAI May 2015] [ICAI Nov 2018]***

The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.

**Answer**

**Doctrine of Indoor Management**

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders **need not enquire** whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to **take it for granted** that the company had gone through all these proceedings in a regular manner.

The doctrine helps to **protect external members** from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with Registrar of Companies.

The doctrine of indoor management is **opposite to the doctrine of constructive notice**. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against actions of a Company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

**Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)**

i) **Knowledge of irregularity:** In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

ii) **Negligence:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the Rule of Indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

iii) **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

**Concept Problem 14 *[RTP May 2018]***

The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors. Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.

**Solution**

**Alteration in Articles of Association:** Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

a. **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.

b. **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

c. **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

d. **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration**. [Section 15]**

**Concept Problem 15 *[MTP May 2020]***

The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

**Answer**

**Doctrine of Indoor Management:** According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.

2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Tridev.

**Concept Problem 16** **[Nov 1997] [May 2007]**

The object clause of the memorandum of association of the XYZ (Pvt) Ltd. authorised to do trading in mangoes. The company however entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. The company subsequently refused to admit the liability to A on the ground of ultra vires the company.
Advice whether stand of the company is legally valid and if so, gives reasons in support of your answer.

**Or**

The object clause of the memorandum of association of LSR Private Ltd. Lucknow authorized to do trading in fruits and vegetables. The company, however, entered into a partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. The company subsequently refused to admit the liability to J on the ground that the deal was ultra Vires the company. Examine the validity of the company's refusal to admit the liability to J. Give reasons in support of your answer.

| | |
|---|---|
| **The company is not liable to A** | - Since the partnership agreement for trading in mangoes is an ultra vires contract and an ultra vires contract is void ab initio and is not binding on the company or the other party.<br>- Since the power to enter into partnership is not an ancillary or incidental power.<br>- Since such power can be legally exercised by the company only if the object clause of memorandum expressly authorises the company to enter into partnership. |

**Concept Problem 17** **[Nov 2006]**

The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land to erect the houses. In the course of transacting the business, the chairman of the company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced finance to another company ABC Ltd. and received an agreed fee of INR 2 lakhs for arranging the finance. The memorandum of association of the company authorise the company to carry on any other trade or business which can in the opinion of the Board of Directors be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, 2013, examine the validity of the contract carried out by XYZ company Ltd. with ABC Ltd.

| | |
|---|---|
| **Arranging finance or financer is an ultra vires act** | - Since it falls outside the objects of memorandum.<br>- Since an object contained in the object clause is not valid if it authorises the company to carry on any other trade or business which can be advantageously carried on by the company. |
| **The conduct entered into by the company is ultra vires** | - Since the company has no power to arrange finance or financer.<br>- Since the Board cannot take the defence that the memorandum authorises the company to carry on any business which can be carried be advantageously carried on in connection with company's present business (since it is a specified purpose given u/s 13 for alteration of object clause but it cannot be the ground or basis for carrying on a business which is outside the object clause) |

**Concept Problem 18** **[May 2010]**

The object clause of the memorandum of association of RST Limited authorizes it to publish and sell text books for students. The company, however entered into an agreement with Q to supply 100 laptops of worth INR 5 lac for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for payment of Q under the provisions of the Company Act, 2013.

| | |
|---|---|
| **The contract to purchase laptops** | - is an ultra vires contract and is therefore void ab initio. |
| **Q cannot enforce the contract against RST Limited** | - since the contract is ultra vires.<br>- since no party to an ultra vires contract has a right to sue the other party. |
| **The court may order RST Limited to deliver back the laptops to Q** | - if the laptops are still in the possession of the company.<br>- if the court, applying the principles of equity, deems it fit considering the circumstances of the case. |

**Concept Problem 19** **[May 2007] [Nov 2007]**

P, the secretary of XYZ Limited issued a share certificate in favour of A purporting to be signed by the directors and the secretary and the seal of the company affixed to it. In fact, the secretary forged the signature of the directors and

| |
|---|
| has affixed the seal without authority. Can A hold the company liable for the shares covered by the share certificate under the provisions of the Companies Act, 2013?<br>**Or**<br>The secretary of a Company issued a share certificate to A under the company seal with his own signature and the signature of a director forged by him. A borrowed money from B on the strength of the certificate. B wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether B will succeed in getting the share registered in his name. |

| | |
|---|---|
| **A is not entitled to shares and he cannot hold the company liable for any loss** | - since in case of forgery, there is not a defect in consent but absence of consent and therefore the share certificate issued by way of forgery is invalid. |

| **Concept Problem 20** | **[Nov 2007]** |
|---|---|
| Under the articles of association of Sunshine Ltd. Company, directors had power to borrow up to INR 10,000 without the consent of the general meeting. The directors themselves lent INR 35,000 to the company without such consent and took debentures of the company. Decide under the provisions of the Companies Act, 2013 whether the company is liable? If so, what is the extent of liability of the company in this case? | |
| **The company is not liable for INR 35,000** | - since the benefit of doctrine of indoor management can be availed of only by an outsider who has no knowledge of any irregularity in the internal management of the company. |
| **The liability of the company is limited to INR 10,000** | - since the directors despite having knowledge of the fact that the limit of borrowings specified under the articles would be exceeded, lent INR 35,000 without the consent of the general meeting.<br>- since on the similar facts as in the given case same decisions was given in ***Howard vs Patent Ivory Manufacturing Company.*** |

| **Concept Problem 21** | **[Nov 2016]** |
|---|---|
| The articles of association of XYZ Ltd. provides the board of directors has authority to issue bonds provided such issue is authorised by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013. | |
| **The company is bound to Mr. X** | - since the lender Mr. X had lent the money to the company assuming that the company was authorised to borrow money after obtaining authorisation from the members in GM;<br>- since, on the same facts, the court held in Royal British Bank v Turquand that the outsiders dealing with the company were not required to inquire into the internal management of the company and the outsiders were entitled to assume that as far as internal proceedings of the company were concerned, everything had been done regularly (termed as doctrine of indoor management). |

## 2. True or False

State whether the following are True or False and give reasons (1 Mark each):

| | | |
|---|---|---|
| **1** | **Nov. 2008** | An ultra vires transaction will not affect the right to acquire the property of a company.<br>**Ans.** The given statement is true.<br>**Reason.** If the company acquires some property under an ultra vires transaction, the company has the right to hold that property and protect it against damage by other parties. |
| **2** | **Nov. 2011** | If the Central Government permits, a public company can be converted into a private company.<br>**Ans.** The given statement is false.<br>**Reason.** As per Sec. 14 approval, of the Tribunal is required for conversion of a public company into a private company. |
| **3** | **Nov. 2015** | A limited company can become a partner in a partnership firm.<br>**Ans.** The given statement is true |

| | | |
|---|---|---|
| | | **Reason.** A company is an artificial person capable of entering into contracts and having the capacity to sue and be sued in its own name.<br>However, a company can become a partner in a partnership firm only if the power to enter into partnership is contained in the Objects Clause of Memorandum. |
| **4** | **May 2016** | A subsidiary company cannot hold shares of its holding company.<br>**Ans.** The given statement is false.<br>**Reason.** As per sec. 19, a subsidiary company may hold shares in the holding company in 3 cases, Viz. where shares are held by it as a legal representative of a deceased member of the holding company, where shares are hold by it as a trustee and where shares were held by it before it become the subsidiary company. |

## 3. QUESTIONS FOR PRACTICE

**1)** What is the importance of registered office of a company? **[Nov. 2015]**

**2)** State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013. **[Nov 2015]**

**3)** Briefly explain the doctrine of ultra vires under the Companies Act, 2013. What are the consequences of ultra vires acts of the company? **[Nov 2003]**

**4)** Briefly explain the doctrine of constructive notice under the Companies Act, 2013. **[May 2003]**

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*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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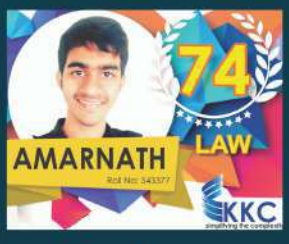




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# CHAPTER 3
# PROSPECTUS & ALLOTMENT OF SECURITIES
## UNIT –I: PROSPECTUS

## 1. PRACTICAL QUESTIONS

**Concept Problem 1 *[ICAI SM]***

What are the requirements as to the issue of the Prospectus?

**Solution**

Comprehensive rules and regulations have been incorporated into the Companies Act, 2013 in respect of this basic document which is the only source of vital information for the investors to ascertain the soundness or otherwise of the company. Since the prospectus is intended to save the investing public from victimisation, the Legislature has aimed at securing the fullest disclosure of all material and essential particulars and laying the same before all the prospective buyers of shares and imposing stringent liabilities for violations.

Briefly the rules and regulations are as follows:

i) **Matters to be stated in a Prospectus –** In order to provide a thorough and comprehensive information on all aspects of the company and the proposed issue, section 26 (1) of the Companies Act, 2013 lists down a large list of items that must be stated in the Prospectus.

ii) **Registration of prospectus –** Section 26 (4) provides that no prospectus shall be issued by or on behalf of a company or in relation to an intended company, unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person or his duly authorized representative, who is named therein as a director or proposed director of the company.

Under sub section (7) it is provided that the Registrar shall not register the prospectus unless the requirements for registration under section 26 are complied with and the prospectus is accompanied by the consent of all the persons named in the prospectus.

iii) **Approval of prospectus by various agencies:** The draft prospectus has to be approved by various agencies before it is filed with the ROC of the concerned State.

iv) **The lead financial institution underwriting the issue, if applicable:** The draft prospectus is vetted by SEBI to ensure adequacy of disclosures. However, vetting by SEBI does not amount to approval of prospectus. SEBI does not take any responsibility for the correctness of the statements made or opinions expressed in the prospectus.

**Concept Problem 2 *[ICAI SM]***

PQR limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers. Before allotment under this offer letter company issued another private placement offer letter to another 155 persons in their individual name for issue of its debentures. Being a public company can it issue securities in a private placement? Is it in compliance with provisions related to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year?

**Answer**

According to section 42 of the Companies Act ,2013, any private or public company may make private placement through issue of a private placement official letter.

But the offer shall be made to persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, qualified institutional buyers and employees under employees' stock option scheme will not be considered.

Here rules prescribed limit as 200 persons in a financial year. But this limit shall be counted separately for each type of security.

If a company makes an offer or invitation to more than the prescribed number of persons it shall be deemed to be an offer to the public and shall be governed by the provisions related to prospectus.

Also, a company cannot make fresh offer under this section if allotments with respect to any offer made earlier have been completed or that offer has been withdrawn or abandoned by the company. This rule is applicable even if the issue is of different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

In the given case PQR limited is a public company and looking at above provisions we can say that even a public company can make private placement. Company has given offer to 55 persons out of which 4 are qualified institutional buyers hence the offer is given to effectively 51 persons which is well within the limit of 200 persons. From this angle company is in compliance with private placement rules.

But company has given another private placement offer which is non-compliance of provisions of section 42 hence the offers given by company will be treated as public offer and will be governed accordingly.

But if the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers. Here we should not add 51 and 155 persons for checking the limit of 200 because this limit should be checked

**Concept Problem 3 *[ICAI SM]***

The Board of Directors of Reckless Investments Ltd. have allotted shares to the investors of the company without issuing a prospectus with the Registrar of Companies, Mumbai. Explain the remedy available to the investors in this regard.

**Answer**

According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the registration of the prospectus with the Registrar before its issue.

In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under section 26 (9) of the Act.

**Concept Problem 4 *[ICAI SM] [MTP Nov 2019]***

An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.

**Answer**

Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such misstatements.

The only situations when a director will not incur any liability for mis statements in a prospectus are as under:

a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe,

that the statement was true or the inclusion or omission was necessary.

b) No civil liability for any mis statement under section 35 shall apply to a person if he proves that:

(1) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(2) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis statements in the prospectus.

**Concept Problem 5** ***[ICAI SM] [ICAI Nov 2018]***

What is a shelf- prospectus? State the important provision relating to the issuance of shelf- prospectus under the provisions of Companies Act, 2013.

**Answer**

**Shelf prospectus** – As per the Explanation given in Section 31 of the Companies Act, 2013, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Provisions relating to issue of Shelf-prospectus:

1. **Filing of shelf prospectus with the registrar:** According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-

   a. of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

   b. in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

2. **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

3. **Intimation of changes:** Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

4. **Memorandum together with the shelf prospectus shall be deemed to be a prospectus:** Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

**Concept Problem 6** ***[ICAI SM] [RTP Nov 2020]***

The Board of Directors of Ramesh Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

**Answer**

As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

Prospectus issued shall make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Accordingly, the Board of Directors of Ramesh Ltd. who proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government in compliance with the above stated provision and make a declaration about the compliance of the above stated provisions.

**Concept Problem 7** ***[ICAI SM] [ICAI Nov 2012] [RTP May 2020] [MTP May 2020]***

Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

**Answer**

Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares. However, he did not suffer any loss due to purchase of such shares.

Hence, Mr. Andrew will have no remedy against the company.

**Circumstances when an expert is not liable:** An expert will not be liable for any mis- statements in the prospectus under the following situations:

i) Under section 26(5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for filing, or

ii) Under section 35(2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such; if it was a correct and fair representation of the statement or extract from the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

**Concept Problem 8** ***[RTP Nov 2018]***

Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus?

**Solution**

Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus

1. According to Section 31 of the Company Act, 2013 any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage—

   a) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

   b) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

2. The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Thus, Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus.

**Concept Problem 9 *[MTP May 2019]***

What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? What are the penalties in case of default in complying with the provisions related to issue of abridged prospectus?

**Solution**

**Meaning of Abridged Prospectus: -** According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

**Circumstances under which the abridged prospectus need not accompany the application forms:** Section 33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

a) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or

b) Where the securities are not offered to the public.

If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

**Concept Problem 10 [RTP Nov 2019]**

Vintage security equipments limited is a manufacturer of CCTV cameras. It has raised 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now

it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.

Does the Companies Act, 2013 allow such change of object? If not, then what advise will you give to company. If yes, then give steps to be followed.

**Answer**

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

a) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

b) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision, we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

| **Concept Problem 11** | **[May 2004] [May 2013]** |
|---|---|
| A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividend for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.<br>**or**<br>XYZ Ltd. issued a prospectus inviting the public for subscription of its equity shares stating in it that Company possesses good financial health and has been paying dividends to its equity shareholders consistently and regularly @ 20 percent over the last five years. The fact was company was running in loss since last three years and it was paying dividends to its shareholders out of accumulated profits. Mr. Amit read the prospectus and bought 500 shares from the company. Discovering the misstatement made by the company in the prospectus, he wants to rescind the contract and claim the damages from the company.<br>Referring the provisions of the Companies Act, decide whether Mr. Amit will succeed. | |
| **The prospectus is misleading** | - since non-disclosure of the fact that the company was making losses and that the dividends were paid out of past year profits gave a false impression that the company was making profits.<br>- since suppression of such fact might have affected investors decision to subscribe for shares.<br>- since the prospectus does not disclose all the material facts truly honestly and accurately. |
| **The allottee of shares is entitled to avoid allotment** | - since the allottee has a right to rescind the contract of allotment of shares if he had relied and acted on the prospectus i.e., he subscribed for shares after being influenced by a misleading prospectus *[Rex v Kylsant]*. |

| **Concept Problem 12** | **[Nov 2006] [Nov 2008] [May 2017] *[Sec 35]*** |
|---|---|
| With a view to issue shares to the general public, a prospectus containing some false information was issued by a company. Mr. X received a copy of the prospectus from the company but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground that the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013, examine whether X's claim for damage is justified.<br>**Or** | |

With a view to issue shares to the general public, a prospectus containing some false information was issued by a company. Mr. Damu received copy of the prospectus from the company but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. Damu bought 4,000 shares through the stock exchange at a higher price which later on fell sharply. Damu sold these shares at a heavy loss. Mr. Damu claims damages from the company for the loss suffered on the ground that the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013, examine whether Damu's claims for damages is justified?

**Or**

M applies for share on the basis of a prospectus which contains misstatement. The shares are allotted to him who afterwards transferred them to N. Can N bring an action for a rescission on the ground of misstatement? Decide under the provision of the Companies Act, 2013.

| | |
|---|---|
| **Mr. X is not an original allottee of shares** | - since he purchased the shares from the market and not from the company. |
| **Mr. X cannot claim damages from the company** | - since Mr. X is not an original allottee of shares.<br>- since Mr. X did not subscribe for shares on the faith of a misleading prospectus. |

**Concept Problem 13** **[May 2008] *[Sec 35]***

Peek Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained false statement. Mr. X purchased some partly paid shares of the company in good faith on the stock exchange. Subsequently, the company was wound up and the name of Mr. X was in the list of contributors. Decide

i. Whether Mr. X is liable to pay the unpaid amount?
ii. Can Mr. X sue the directors of the company to recover damages?

| | |
|---|---|
| **Mr. X is not an original allottee of shares** | - since he purchased shares from the secondary market viz stock exchange. |
| **Mr. X is liable to pay the unpaid calls** | - since Mr. X holds partly paid shares.<br>- Since he is liable as a contributory. |
| **Mr. X cannot sue the directors to recover damages** | - since Mr. X has no cause of action against the company or the directors as he did not subscribe for shares on the faith of a misleading prospectus. |

**Concept Problem 14** **[Nov 2009] *[Sec 35]***

Modern Furniture's Limited was willing to purchase Teakwood Estate in Chhattisgarh state. Its prospectus contained some important extracts from an expert report giving the number of teakwood trees and other relevant information in the estate in Chhattisgarh state. The report was found inaccurate Mr. X purchased the shares of modern furniture limited on the basis of the above statement in the prospectus. Will Mr. X have any remedy against the company? When an expert will be not liable? State the provisions of the Companies Act, 2013 in this respect

| | |
|---|---|
| **Mr. X is entitled to repudiate the allotment** | - since he purchased the shares relying on a miss-statement contained in the prospectus. |
| **An expert is not liable if** | - he proves that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue, he gave reasonable public notice that it was issued without his knowledge or consent. |

## 2. QUESTIONS FOR PRACTICE

**1)** Explain the conditions and the manner in which a company may issue depository receipt in a foreign country under the Company's Rules, 2014. **[May 2015]**

**2)** What is meant by abridged prospectus? Under what circumstances a company issuing abridged prospectus need not accompany the prescribed detail along with the application form for issue of shares? **[Nov 2004]**

**3)** Explain the concept of deemed prospectus under the Companies Act, 2013. Under what circumstances such prospectus need not be issued? **[Nov 2015] [May 2004]**

**4)** Explain the concept of Shelf prospectus in the light of Companies Act, 2013. What is the law relating to issuing and filing of such prospectus? **[May 2003] [Nov 2016] [Nov 2018]**

**5)** When is a company required to issue a shelf prospectus under the provisions of the Companies Act, 2013? Explain the provisions of the Companies Act, 2013 relating to the issue of shelf prospectus and filing it with the registrar of companies. **[Nov 2005]**

**6)** What is meant by shelf prospectus? Who can file a shelf prospectus to the registrar of companies? Stating the provision of Companies Act, 2013, point out the circumstances under which such prospectus is required to be filed with the registrar of companies. **[Nov 2008]**

**7)** Explain the meaning of shelf prospectus. State the law relating to shelf prospectus as contained in Companies Act, 2013. **[Nov 2013]**

**8)** What are the provisions relating to information memorandum as contained in the Companies Act, 2013? **[May 2006]**

**9)** What is meant by red herring prospectus? state the circumstances under which such prospectus is required to be filed with the registrar of companies. What is the requirement relating to filing of final prospectus in such cases? **[May 2008]**

**10)** State the provisions relating of "Information memorandum" under section 60B of the Companies Act, 1956. **[May 2014]**

**11)** When is an expert not liable for untrue statement in the prospectus issued by a company? **[Nov 2006]**

**12)** What is the law relating to criminal liability for misstatement in the prospectus? **[Nov 2011]**

**13)** Discuss the provisions relating to private placement of shares under the companies act, 2013. **[Nov 2008]**

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*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
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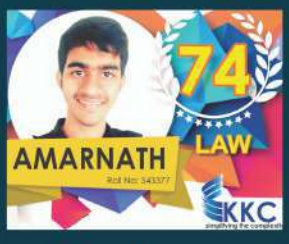




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# CHAPTER 3
# PROSPECTUS & ALLOTMENT OF SECURITIES
## UNIT II-ALLOTMENT

## 1. PRACTICAL QUESTIONS

**Concept Problem 1** ***[ICAI SM] [RTP May 2018] [ICAI Nov 2010]***

Unique Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies

**Solution**

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under *Companies (Prospectus and Allotment of Securities) Rules, 2014*. In relation to the case given, the conditions applicable under the above Rules are as under:

a. The payment of such commission shall be authorized in the company's articles of association;

b. The commission may be paid out of proceeds of the issue or the profit of the company or both;

c. The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

**Concept Problem 2** ***[ICAI SM] [ICAI Nov 2013] [MTP Nov 2018] [MTP May 2019]***

State in what way does the Companies Act, 2013 regulate and restrict the following in respect of a company going for public issue of shares:

a) Minimum Subscription, and
b) Application Money payable on shares being issued.

**Solution**

The Companies Act, 2013 by virtue of provisions as contained in Section 39 (1) and (2) regulates and restricts the minimum subscription and the application money payable in a public issue of shares as under:

**a) Minimum subscription [Section 39 (1)]**

No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -

i) the amount stated in the prospectus as the minimum amount has been subscribed; and

ii) the sums payable on application for such amount has been paid to and received by the company-

**b) Application money**:

Section 39 (2) provides that the amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Further section 39 (3) provides that if the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money received within such time and manner as may be prescribed.

In case of any default under sub-section, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Section 40 (3) provides that all moneys received on application from the public for subscription to the securities shall be kept in a separate bank account maintained with a scheduled bank.

**Concept Problem 3** ***[ICAI SM] [ICAI Nov 2015] [ICAI May 2019]***

When is an allotment of shares treated as an irregular allotment? Briefly state the effects of an irregular allotment.

**Answer**

**Irregular allotment:** The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfilment of those requirements.

In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by section 23; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under section 26 (4); or
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

**Concept Problem 4** ***[ICAI SM] [May 2003] [Nov 2008] [Nov 2015] [MTP May 2019]***

Examine the validity of the following statement with reference to the provisions of the Companies Act, 2013.

"The Articles of Association of X Limited contain a provision that the underwriting commission may be paid up to 4% of the issue price of the shares. However, the Board of Directors have decided to pay the underwriting commission of 5% to Deal & Co., the underwriters."

**Answer**

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to the conditions prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 13 states that the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.

Therefore, the decision of the Board of Directors to pay 5% underwriting commission to the underwriters (i.e. Deal & Co.) is invalid.

**Concept Problem 5 *[ICAI May 2018]***

TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.

**Solution**

The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows:

**Payment of commission:** A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

**Conditions for the payment of commission:**

1. the payment of such commission shall be authorized in the company's articles of association;
2. the commission may be paid out of proceeds of the issue or the profit of the company or both;
3. Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
4. Disclosure of particulars: the prospectus of the company shall disclose the following particulars -
    a. the name of the underwriters;
    b. the rate and amount of the commission payable to the underwriter; and
    c. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
5. No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
6. Copy of contract of payment of commission to be delivered to registrar: a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

**Concept Problem 6**

After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of Akash. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets.

Akash refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 2013. Comment.

**Answer**

**Allotment of Shares:** The company has received 80% of the minimum subscription as stated in the prospectus. Hence, the allotment is in contravention of section 39(1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. Under section 39(3), it is required to refund the money received (i.e. 80% of the minimum subscription) to the applicants. It has no other option available.

Therefore, in the present case Akash is within his rights refuses to accept the allotment of shares which has been illegally made by the company.

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## About CA Kishan Kumar

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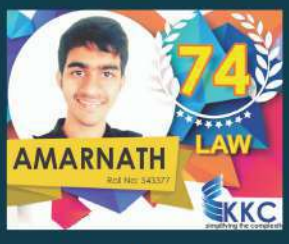




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# CHAPTER 4 A
# SHARE CAPITAL & DEBENTURES

## 1. PRACTICAL QUESTIONS

**Concept Problem 1 *[ICAI SM]***

Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013.

Mars India Ltd. owed to Sunil Rs.1,000. On becoming this debt payable, the company offered Sunil 10 shares of Rs.100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil.

**Solution**

Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a **valuation report of a registered valuer**, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

In the present case, Mars India Ltd is **empowered to allot** the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a **special resolution.** Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

**Concept Problem 2 *[ICAI SM] [May 2001] [May 2007] [May 2017]***

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2007) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd, on the ground that it was already holding a high percentage of the total number of shares already issued, in SV Company Ltd. The Articles of Association of SV Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1, 2007 new shares were offered to all the shareholders except VRS Company Ltd.

Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Limited of not offering any further shares to VRS Company Limited.

**Solution**

The legal issues in the presented problem in the question is covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

The company cannot ignore a section of the existing shareholders and **must offer the shares to the existing equity shareholders in proportion to their holdings.**

As per facts of the case, the articles of SV company Ltd. provided that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS company Ltd., which held its, controlling shares. It was held that SV company Ltd. had no legal authority under the Companies Act to do so.

Therefore, in the given case, SV Ltd.'s decision not to offer any further shares to VRS Co. Ltd on the ground that VRS Co. Ltd already held a high percentage of shareholding in SV Co. Ltd. is **not valid** for the reason that it is violative of the provisions of Section 62 (1) (a) as also substantiated by the ruling in the above referred case.

**Concept Problem 3 *[ICAI SM] [MTP May 2020]***

The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered and the procedure to be followed for the said alteration.

**Solution**

**Alteration of Capital [Section 61 (1) read with section 13 of the Companies Act, 2013]:** Under section 61 (1) a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:

a) **increase** its authorized share capital by such amount as it thinks expedient;
b) **consolidate** and divide all or any of its share capital of a larger amount than its existing shares
c) **convert** all or any of its paid- up shares **into stock** and **reconvert** that stock into fully paid shares
d) **sub-divide** the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
e) **cancel** those shares which, at the time of passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

**Procedure for alteration of Capital Clause**

**i) Power in articles**

The share capital of a Company can be altered only if it so authorized by its articles of association.

**ii) Pass ordinary resolution**

The company must obtain the approval of members by passing an ordinary resolution in the general meeting of its members. For this purpose, a Board Meeting must be held to convene a general meeting of the members and all legal provisions in this behalf followed including the circulation of a detailed explanatory note on the proposed change along with the notice for the general meeting;

**iii) Notice to ROC**

Notice of such alteration along with the altered copy of MOA must be given to the registrar within 30 days of alteration.

**Note:** No alteration to the Memorandum will have effect unless it has been registered with the Registrar as above.



**Concept Problem 4 *[ICAI SM] [MTP May 2019] [RTP May 2019] [MTP May 2020]***

Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid - up share capital of Rs. 200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

**Solution**

**Sweat equity shares of a class of shares already issued.**

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

1. the issue is **authorised by a special resolution** passed by the company;
2. the **resolution specifies** the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

3. where the equity shares of the company are **listed on a recognised stock** exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014,*

   The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

**Data Limited can issue Sweat equity shares** by following the conditions as mentioned above. It does not make a difference that the company is just a few months old because no such minimum time limit in operations is specified under Section 54.

**Concept Problem 5** ***[ICAI SM] [ICAI Nov 2016]***

What are the provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee':

a) A shareholder who has no beneficial interest.

b) A creditor whom the company owes Rs. 499 only.

c) A person who has given a guarantee for repayment of amount of debentures issued by the company?

**Answer**

**Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members **exceeding five hundred** for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

The rules framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the rules, **no person** shall be appointed as a debenture trustee, if he-

(i) Beneficially holds **shares** in the company;

(ii) Is **promoter, director or key managerial personnel** or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iii) Is beneficially entitled to **moneys** which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(iv) Is **indebted** to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(v) Has furnished any **guarantee** in respect of the principal debts secured by the debentures or interest thereon;

(vi) Has any **pecuniary relationship** with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(vii) is a relative of any promoter or any person who is in the employment of the company as director or key managerial personnel;

Thus, based on the above provisions answers to the given questions are:

a) A shareholder who has no beneficial interest, **can be** appointed as a debenture trustee.

b) A creditor whom company owes Rs. 499 **cannot be** so appointed. The amount owed is immaterial.

c) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also **cannot** be appointed as a debenture trustee.

**Concept Problem 6 *[ICAI SM] [Nov 2017] [MTP Nov 2020]***

Shree Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance sheet as at March 31,2017 shows the following positions:

Authorized share capital (2,500,000 equity share of face value of 10 /- each fully paid –up) 25,00,00,000

Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of INR 10/- each, fully paid-up) INR 1,00,00,000.

Free Reserves INR 3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss.

**Answer**

According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

a) its free reserves;
b) the securities premium account; or
c) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

i) it is authorised by its **Articles**;
ii) it has, on the recommendation of the **Board**, been authorised in the **general meeting** of the company;
iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
v) the partly paid-up shares, if any outstanding on the date of allotment, are made **fully paid-up**;
vi) it complies with such conditions as may be prescribed.

But the company has to ensure that the bonus share shall not be issued in lieu of dividend.

To issue bonus shares, Company will need reserves of INR 50,00,000 (half of INR 1,00,00,000), which is available with the company. Hence after following the above compliances on issuing bonus share under the Companies Act, 2013, Shree Ltd. **may proceed** for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

**Concept Problem 7 *[ICAI SM]* [MTP May 2019]**

Walnut Limited has an authorized share capital of 1,00,000 equity shares of INR 100 per share and an amount of INR 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

**Answer**

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the

company.

The securities premium account may be applied by the company—

a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

b) in writing off the preliminary expenses of the company;

c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

e) for the purchase of its own shares or other securities under section 68.

The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, —

a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or

c) for the purchase of its own shares or other securities under section 68.

**Concept Problem 8** ***[ICAI SM] [Nov 2010] [Nov 2015] [RTP May 2020] [MTP Nov 2020]***

OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of INR 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of INR 30,000 per month, to buy 500 partly paid-up Equity Shares of INR 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

**Answer**

Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

a) The employee must not be a Key Managerial Personnel;
b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
c) The shares to be subscribed must be fully paid shares

In the given instance, Human Resource Manager is not a KMP of the OLAF Ltd. He is drawing salary of INR 30,000 per month and loan taken to buy 500 partly paid up equity shares of INR 1000 each in OLAF Ltd.

Keeping the above provisions of law in mind, the company's (OLAF Ltd.) decision is invalid due to two reasons:

i) The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to INR 1.8 Lakhs.

ii) The shares subscribed are partly paid shares whereas the benefit is only for subscribing fully paid shares.

**Concept Problem 9** ***[ICAI SM]***

Due to insufficient profits, Silver Robotics Limited is unable to redeem its existing preference shares amounting to INR 10,00,000 (10,000 preference shares of INR 100 each) though as per the terms of issue they need to be redeemed within next two months. It did not, however, default in payment of dividend as and when it became due. What is the remedy available to the company in respect of outstanding preference shares as per the Companies Act, 2013?

**Answer**

According to Section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

- with the consent of the holders of three-fourths in value of such preference shares, and
- with the approval of the Tribunal on a petition made by it in this behalf,

issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

In view of the provisions of Section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. INR 10,00,000. For this purpose, it shall obtain the consent of the holders of three-fourths in value of such preference shares and also seek approval of the Tribunal by making a petition.

In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the Tribunal may order the company to redeem forthwith such preference shares. Accordingly, Silver Robotics Limited must be ready with sufficient funds for the redemption of preference shares held by those who have not consented.

On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

**Concept Problem 10 *[ICAI SM]***

State the legal provisions in respect of 'Declaration of Solvency', which an unlisted public company needs to adhere to while taking steps to buy-back its own shares.

**Answer**

According to Section 68 (6), where an unlisted public company has passed a special resolution under Section 68 (2)(b) or the Board has passed a resolution under item (ii) of the proviso to Section 68 (2) (b) to buy-back its own shares, it shall, before making such buy-back, file with the Registrar a 'Declaration of Solvency' in Form SH-9.

The declaration shall be verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

**Concept Problem 11 *[ICAI Nov 2017]***

Shyam Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Jaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached XYZ Ltd. for subscribing to the shares of the Company for expansion purposes. Can Shyam Dairy Ltd. issue shares only to XYZ Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions.

**Solution**

**Issue of Further Shares:** According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to –

i) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

ii) employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Since, in the given case Shyam Dairy Ltd. approached XYZ Ltd. for subscribing to the shares of the company for its expansion and XYZ Ltd. is neither an existing equity shareholder of the company nor an employee, Shyam Dairy Ltd., if it is authorised by a special resolution, may issues shares to XYZ Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

**Concept Problem 12** ***[RTP May 2018]***

Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy-back of shares can be financed?

**Solution**

In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid- up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:

a) Free reserves or
b) Security Premium account or
c) Proceeds of the issue of any shares or other specified securities

However, under the proviso to section 68 (1) no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

**Concept Problem 13** ***[May 2018]***

Xgen Limited has a paid-up equity capital and free reserves to the extent of INR 50,00,000. The company is planning to buy-back shares to the extent of INR 4,50,000. The company approaches you for advice with regard to the following

1. Is special resolution required to be passed?
2. What is the time limit for completion of buy-back?
3. What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy -back?

**Solution**

Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares. As per the Act, the company shall not purchase its own shares or other specified securities unless-

(a) The buy-back is authorized by its articles;

(b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where—

(1) the buy-back is, 10% or less of the total paid-up equity capital and free reserves of the company; and

(2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

**Time limit for Completion of Buy Back:** As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

**Ratio of aggregate debts:** Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid-up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

As per the stated facts, Xgen Ltd. has a paid-up equity capital and free reserves to the extent of INR 50,00,000. The company planned to buy back shares to the extent of INR 4,50,000.

Referring to the above provisions, the answers will be as follows:

1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
2. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid-up capital and its free reserves.

The above buy-back is possible when backed by the authorization by the articles of the company.

**Concept Problem 14** ***[RTP Nov 2018]***

Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

**Solution**

**According to section 48 of the Companies Act, 2013-**

1. **Variation in rights of shareholders with consent**: Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class—

   a) if provision with respect to such variation is contained in memorandum or articles of the company; or

   b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

   **Provided** that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

2. **No consent for variation:** Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

   **Provided** that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the

shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

**Concept Problem 15** ***[RTP Nov 2018]***

Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?

**Solution**

**Issue of Further Shares:** Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

i) Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

ii) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

iii) if any equity shareholder to whom the shares are offered in terms of section 62 (1) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

**Preference Shareholders**: From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

**Concept Problem 16** ***[RTP Nov 2018]***

Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the companies Act, 2013, what advice would you give to the company in this regard?

**Solution**

Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

**Concept Problem 17 *[ICAI May 2019]***

Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares.

**Answer**

Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

i) its free reserves; or

ii) the securities premium account; or

iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

**Prohibition for buy-back in certain circumstances [Section 70]**

(1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-

a) through any subsidiary company including its own subsidiary companies; or

b) through any investment company or group of investment companies; or

c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).



**Concept Problem 18 *[ICAI Nov 2018]***

ABC Ltd. has following balance in their balance sheet as on 31st March 2018.

| Particulars | Amount (lakhs) |
|---|---|
| Equity shares capital (3.00 Lakhs equity shares of INR 10 each) | 30.00 |
| Free reserves | 5.00 |
| Securities premium account | 3.00 |
| Capital redemption reserve account | 4.00 |
| Revaluation reserve | 3.00 |

Directors of the company seeks your advice in following cases:

i) Whether company can give bonus shares in the ratio of 1:3?

ii) What if company decide to give bonus shares in the ratio of 1:2?

**Answer**

**Issue of bonus shares [Section 63]:** As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

a. its free reserves;

b. the securities premium account; or

c. the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
As per the given facts, ABC Ltd. has total eligible amount of INR12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is INR 30.00 lakhs.
Accordingly:

**i)** For issue of 1:3 bonus shares, there will be a requirement of INR 10 lakhs (i.e., 1/3 x 30.00 lakh) which is well within the limit of available amount of INR 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.

**ii)** In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of INR 15 lakhs (i.e., ½ x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of INR 15 Lakhs is exceeding the available eligible amount of INR 12 lakhs.

**Concept Problem 19 *[ICAI Nov 2019]***

XYZ unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,

a) Decide, whether the company's proposal is in order.

b) What will be your answer if buy-back offer date is revised from January 5 th, 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above?

**Answer**

In the instant case, the company's proposal is not in order due to the following reasons:

**i)** Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year

**ii)** The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).

**iii)** Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. [proviso to section 68(2)]

**iv)** The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

**Second part:** If buy-back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

**Concept Problem 20 [Nov 2017]**

a) A Limited has an Authorized Capital of 10,00,000 equity shares of the face value of INR 100/- each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the Company in the share market and requested the Company to reduce the face value of each share to INR 10/- and increase the number of shares to 1,00,00,000. Examine whether the request of the shareholders is possible and if so, how the Company can alter its share capital as per the provisions of the Companies Act, 2013.

b) What do you mean by 'Pari Passu' clause in a debenture? State the particulars that are required to be filed with the Registrar of Companies in case such debentures are secured by way of a charge on certain immovable assets of the Company.

**Solution**

a) **Power of Limited Company to Alter its Share Capital:** As per section 61 of the Companies Act, 2013, a limited company having share capital may, if so authorised by its articles, may alter its memorandum in its general meeting so as to divide all or any of its share capital of a larger amount than its existing shares or sub-divide the whole or any part of its shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

In the given instance, shareholders of A Limited in the Annual General Meeting, requested the company to reduce the face value of each shares (i.e. from INR 100 to INR 10) and increase in the number of shares, then is fixed by the memorandum (i.e., from 10 lacs to 1 crore). According to the above stated provision, it is possible on the part of the company to alter its share capital by sub-dividing its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, provided it is authorised by its articles. The company has to alter its memorandum in its general meeting as per the procedure contained in the provisions of section 13 of the Companies Act, 2013.

b) **'Pari Passus':** Pari Passus clause in a debenture means that all the debentures of that particular series are to be paid ratably, if, therefore, security is insufficient to satisfy the whole debts secured by the series of debentures, the amounts of debentures will abate proportionately. If this clause is not included, the debentures will rank in priority for payment in accordance with the date of issue, and if they are all issued on the same date, they will be payable according to their numerical order. A company, however, cannot issue a new series of debentures so as to rank 'pair pass' with any prior series unless the power to do so is expressly reserved and contained in the document of offer.

**Registration of charge:** Under section 77 (1) of the Companies Act, 2013, it shall be the duty of every company creating a charge on its property or assets or any of its undertakings, whether tangible or otherwise to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed with the Registrar within thirty days of its creation.

In terms of Rule 3 of the Companies (Registration of Charges), Rules 2014 for the registration of charge in respect of debentures the following documents should be submitted to the Registrar:

i. The particulars of charge;
ii. Instrument for the creation or the modification of the charge;
iii. Application in prescribed Form in prescribed Form

| **Concept Problem 21** | **[Nov 1999] [Nov 2005] *[Sec 50 and 51]*** |
|---|---|
| Sunrise Ltd. is authorised by its Articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'X' a shareholder of the sunrise Ltd. deposits in advance, the remaining amount due on his shares without any calls made by sunrise Ltd.<br>Referring to the provisions of the Companies Act, 2013, decide the rights and liabilities of Mr. X which will arise on the payment of calls made in advance. | |

| | |
|---|---|
| **Acceptance of calls in advance by Sunrise Ltd. is valid (sec 50 of the Companies Act, 2013)** | - Since Sunrise Ltd. has express provision in the articles authorising it to accept calls in advance.<br>- Since the power to receive calls in advance has been exercised for the benefit of the company. |
| **Rights and liabilities of X** | - X shall not be entitled to any voting rights in respect of calls in advance until the call becomes presently payable.<br>- The dividend is paid on the nominal value of a share. However, Sunrise Ltd shall pay dividend in proportion to the paid-up capital held by each member if the articles so provide.<br>- Interest on calls in advance shall be paid to X at such rates as may be specified in the articles.<br>- X becomes an unsecured creditor of the company.<br>- The amount paid as calls in advance is non- refundable.<br>- The liability of X to pay the future calls is extinguished to the extent of calls paid in advance by him.<br>- In case of surplus in winding up before repayment of capital to the members, the amount paid as calls in advance along with interest shall be repaid to X. |

**Concept Problem 22** **[Nov 2002] [Nov 2016] *[Sec 68]***

ABC Company Limited, at a general meeting of members of the company, passes an ordinary resolution to buy back 30% of its equity share capital. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013 and stating the sources through which the buyback of companies owns shares be executed, examine:

i. Whether company's proposal is in order?

ii. Would your answer be still the same in case the company, instead of 30%, decides to buy-back only 20% of its equity shares capital?

| | |
|---|---|
| **The proposal of the company to buy-back its share is not valid** | - Since the company has passed OR instead of SR, as required u/s 68.<br>- Since the company proposes to buy- back 30% of the equity share capital which exceeds the statutory ceiling of 25% of total paid up equity capital.<br>- Since the company proposes to buy-back out of the proceeds of an earlier issue of same kind of shares which is prohibited u/s 68. |
| **The decision to buy back 20% of equity share capital shall not be valid** | - Since buy back by passing OR is violative of sec 68.<br>- Since buy back out of the proceeds of an earlier issue of same kind of shares is prohibited u/s 68. |

## 2. True or False

State whether the following are True or False and give reasons (1 Mark each):

| | | |
|---|---|---|
| **1** | **May 2010, May 2013** | Issue of debenture with voting rights is not permissible.<br>**Ans.** The given statement is True.<br>**Reason.** As per sec. 71, no company shall issue any debenture carrying voting rights. |
| **2** | **May 2015, Nov. 2016** | Debentures with voting right can be issued only if permitted by the article of association.<br>**Ans.** The given statement is False.<br>**Reason.** As per sec. 71, no company shall issue any debenture carrying voting rights. |
| **3** | **May 2007** | A minor also can become a member of a company.<br>**Ans.** The given statement is False.<br>**Reason:** A minor has no capacity to contract or to incur any obligation, so he cannot become a member. However, transfer of fully paid up shares to a minor is permissible. |
| **4** | **Nov. 2009** | A transferee becomes a member of the company when the instrument of transfer is submitted with the company.<br>**Ans.** The given statement is False.<br>**Reason:** As per sec. 2(55), every person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the |

| | | |
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| | | company. Thus, the transferee becomes a member only when the company gives effect to the transfer deed and enters the name of the transferee in the register of members. |
| **5** | **May 2017** | Right shares are those shares which are issued by newly formed company.<br>**Ans.** The given statement is False.<br>**Reason:** As per sec. 62, right shares means those shares which are offered by a company to its existing shareholders. |
| **6** | **May 2007** | New shares cannot be issued to outsiders without prior offer to the existing shareholders.<br>**Ans.** the given statement is True.<br>**Reason:** As per sec. 62, further shares shall be offered to the existing equity shareholders, in proportion to the paid-up capital held by them. |
| **7** | **Nov. 2007** | A public company cannot issue equity shares with differential rights as to dividend.<br>**Ans.** The given statement is False.<br>**Reason:** Sec. 43 authorises issue of equity share capital with differential rights as to dividend, voting or otherwise in accordance with such Rules as may be prescribed. |
| **8** | **May 2008** | A public company can issue either redeemable or irredeemable preference shares.<br>**Ans.** The given statement is False.<br>**Reason:** As per sec. 55, no company shall issue irredeemable preference shares. |
| **9** | **Nov. 2014** | As per section 51 of the Companies Act, 2013, a company may, if so authorized by its Articles pay dividends in proportion to the amount paid up on each share.<br>**Ans.** The given statement is True.<br>**Reason:** As per sec. 51, the Articles of a company may provide that the dividend shall be paid in proportion to the amount paid-up on each share. |
| **10** | **May 2015** | Deferred shares also called founder's shares.<br>**Ans.** The given statement is True.<br>**Reason:** Deferred shares are generally held by the promoters, viz, founder of the company and therefore these shares are called as founder shares. |

## 3. QUESTIONS

**1)** Explain in brief 'Equity share capital and preference share capital'. **[May 2007]**

**2)** Can a company, limited by shares or guarantee and having share capital, reduce its share capital? **[May 2013]**

**3)** Diminution of share capital does not constitute a reduction within the meaning of Companies Act, 2013. State in what respect they differ from each other. **[May 2004] [Nov 2015]**

**4)** Can a company issue shares at a discount? **[May 2004] [Nov 2012]**

**5)** Explain briefly the meaning of sweat equity shares to its employee. Referring to the provisions of Companies Act, 2013, state the conditions required to be fulfilled by the company. **[Nov 2003]** [**May 2005]**

**6)** German Pharmaceuticals Limited is a zero-debt company having 10 lakhs equity shares of INR 10 each. The directors desire to buy back its own shares. Can it do so? If so, how? **[May 2007]**

**7)** Whether a company can buy back its own shares? Discuss the legal provisions as regards to the conditions for buy-back as contained in the Companies Act, 2013. **[Nov 2013]**

**8)** M/S Growmore Pharma Limited is planning to buyback of its shares during the current year but the company has defaulted in the payment of term loan interest thereon to it bankers. The company seeks your advice as to how and when the company can buy back its shares under these circumstances as per the provisions of the Companies Act, 2013. **[Nov 2014]**

**9)** What is the law and procedure for issuing a duplicate share certificate under the provisions of the Companies Act, 2013 in case the original share certificate is lost or destroyed? **[Nov 2011]**

**10)** What are the conditions and procedure under which shares may be forfeited under the Companies Act, 2013? **[May 2003]**

**11)** Explain briefly the distinction between shares and debentures. **[Nov 2004]**

**12)** Board of Directors of PQR Limited wants to create a debenture redemption reserve (DRR) for the redemption of debentures issued by the company under the provisions of the Companies Act, 2013. Explain the provisions of the Company Rules, 2014 in this regard. **[May 2015]**

**13)** Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued. **[ICAI May 2018]**

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*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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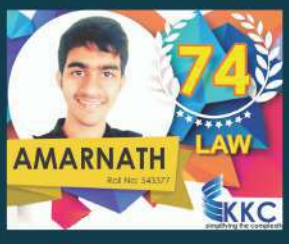




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# CHAPTER 4B
# TRANSFER AND TRANSMISSION OF SHARES

## 1. PRACTICAL QUESTIONS

**Concept Problem 1** ***[ICAI SM] [Nov 2015] [RTP May 2018] [MTP May 2019]***

A company refuses to register transfer of shares made by Mr. X to Mr. Y. The company does not even send a notice of refusal to Mr. X. or Mr. Y respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013.

**Or**

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?

**Solution**

**Refusal of registration and appeal against refusal:** The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Mr. X can make an appeal before the tribunal and claim damages.

**Concept Problem 2** ***[ICAI SM]***

Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiryof four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take, action in the said matter?

**Solution**

**Jurisdiction of Court, now Tribunal, the Companies Act, 2013:** According to Section 56 (4) of the Companies

Act, 2013 every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares **transferred** within a period of **one month** from the date of receipt by the company of the instrument of transfer.

Further under section 56 (6), where any default is made in complying with the provisions of sub-sections (1) to (5) of section 56 (which deals with transfer and transmission of shares), the company shall be **punishable** with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than 10,000 rupees but which may extend to one lakh rupees.

The jurisdiction binding on the company is that of the state in which the registered office of the company is situated. Hence, in the given case the **Delhi court is not competent to take-action in the matter.**

**Concept Problem 3 *[ICAI SM] [Nov 2009]***

Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.

**Solution**

According to Section 46(1) of the Companies Act, 2013, a share certificate duly issued as per the provisions of this Act, specifying the shares held by any person, shall be **prima facie evidence** of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a **forged transfer is a nullity**. It does not give the transferee (Y) any title to the shares. Similarly, any transfer made by Y (to Z) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the **company is bound to restore the name of X** as the holder of the shares and to pay him any dividends which he ought to have received.

In the above case, 'therefore, X has the right against the company to get the shares recorded in his name. However, **neither Y nor Z' have any rights against the company** even though they are bona fide purchasers.

However, since X seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Y and Z.

**Concept Problem 4 *[RTP Nov 2018]***

Mr. Siddharth holds 400 shares of Gauri Ltd. He intends to nominate these shares to his son Ambar. Discuss the provisions of the Companies Act, 2013 in relation to facility of nomination.

**Solution**

Nomination is a facility whereby a holder of any financial asset (bank a/c, FD, securities etc.) could nominate the name of person who would be entitled to that financial asset in case of his or her death. Generally, such nomination overrides any will. It is a very logical thing to do to avoid legal, procedural tangles related to transmission at a later stage for the near and dear ones.

As per Section 72 of the Companies Act, 2013-

a) every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

b) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

c) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

d) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

Thus, Mr. Siddharth can nominate the shares held by him in Gauri Ltd. to his son.

**Concept Problem 5** **[May 2007] [May 1997] [Nov 2002] [Nov 2016]**

X, a registered shareholder of Y Limited left his share certificates with his broker. A forged the transfer deed in favour of Z, accompanied by these share certificates and lodged the transfer deed along with the share certificates with the company for registration. The company secretary who had certain doubts wrote to X informing him of the proposed transfer and in the absence of a reply from him (X) within the stipulated time, registered the transfer of shares in the name of Z. Subsequently, Z sold the shares to J and J's name was placed in the register of shareholders. Later on, X discovered that forgery has taken place.
Referring to the provisions of the Companies Act, 2013, state the remedy available to X and Z in the given case. Explain.

**Or**

500 equity shares in XYZ Limited were acquired by Mr. B but the signature of Mr. A, the transferor on the transfer deed was forged. Mr. B, after getting the shares registered by the company in his name, sold 200 equity shares to Mr. C on the strength of the shares certificate issued by XYZ Limited. Mr. B and Mr. C were not aware of the forgery. What are the rights of Mr. A, B and C against the company with reference to the aforesaid shares?

**Or**

A commits forgery and thereby obtains a certificate of transfer of shares from a company and transfers the shares to B for value acting in good faith. Company refuses to transfer the shares to B. Whether the company can refuse? Decide the liability of A and of the company towards B.

**Or**

'V', the transferee acquired 300 equity shares of ABC Limited form 'S', the transferor. But signature of 'S', the transferor on the transfer deed was forged. 'V', after getting the shares registered by the company in his name subsequently sold 250 shares to 'X' on the basis of the share certificate issued by ABC Ltd. 'V' and 'X' were not aware of the forgery. Explain the right of 'S' 'V' and 'X' against the company with reference to the aforesaid equity shares under the provisions of the companies act, 2013.

| | |
|---|---|
| **Rights of Mr. X** | - He can compel the company to restore his name on the register of members (since a forged transfer is without any legal effect and the true owner continues to be the member of the company). |
| **Liabilities of Z** | - Z is liable to compensate the loss caused to the company since he had lodged the forged transfer deed even though he was not aware of the forgery. |
| **Rights of J** | - The company can refuse to register J as a member.<br>- The company is liable to J since the company had issued share certificate to Z and therefore the company shall be stopped from denying the liability accruing to it from its own default. |

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- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
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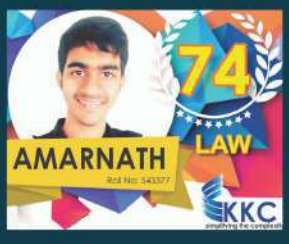




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# CHAPTER 5
# ACCEPTANCE OF DEPOSITS

**Concept Problem 1** ***[ICAI SM] [MTP May 2020]***

Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

i) Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company INR 30.00 lacs in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.

ii) Polestar Traders Limited received a loan of INR 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.

iii) City Bakers Limited failed to repay deposits of INR 50.00 crores and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?

iv) Shringaar Readymade Garments Limited wants to accept deposits of INR 50.00 lacs from its members for a tenure which is less than six months. Is it a possibility?

v) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

**Solution**

i) If a start –up company receives INR twenty-five lakhs or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Zarr Technology Private Limited, a start –up company, received INR 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. Accordingly, the amount of INR 30.00 lacs shall be considered as deposit.

ii) Any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of INR 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

If these conditions are satisfied, INR 30.00 lacs shall not be treated as deposit

iii) By not repaying the deposit of INR 50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

- **Punishment for the company:** City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than INR one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to INR ten crores.
- **Punishment for officer-in-default:** Swati, being the officer-in-default, shall be punishable with

imprisonment which may extend to seven years and with fine which shall not be less than INR twenty-five lakhs but which may extend to INR two crores.

Further, if it is proved that Swati had contravened such provision knowingly or wilfully with the intention to deceive the company or its shareholder or depositors or creditors or tax authorities, she will be liable for action under section 447 (punishment for fraud).

iv) A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

a) such deposits shall not exceed ten percent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

b) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of INR 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid- up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

v) According to section 73 (1) of the Act, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public.

However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Hosing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73(1) of the Act with respect to the acceptance and renewal of deposit from public shall not apply to it.

In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.



**Concept Problem 2 *[ICAI SM]***

Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.

**Answer**

Following amounts, if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hindered and sixty-five days from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.

b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement.

c) any amount received as security deposit for the performance of the contract for supply of goods or provision of service;

d) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;

e) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service, whichever is less;

f) any amount received as an advance and as allowed by any sectoral regulator or in accordance with direction of central or State Government;

g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, if the amount received under items (a) , (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub –clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

**Concept Problem 3** ***[ICAI SM] [MTP May 2019]***

ABC Limited having a net worth of 120 crore rupees wants to accept deposit from its members. They have approached you to advise them regarding that if they fall within the category of eligible company, what special care has to be taken while accepting such deposit from members in case their company falls within the category of an eligible company.

**Solution**

"Eligible company" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits :

However, an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.

An eligible company shall not accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company.

Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

**Concept Problem 4** ***[ICAI SM] [ICAI May 2016] [ICAI Nov 2018]***

State the procedure to be followed by the companies to accepts deposits from its members according to the Companies Act, 2013. What are the exemptions available to the private limited companies?

**Answer**

**Acceptance of deposit by company from its members**:

According to Section 73 (2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment

of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:

a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

b) filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;

c) depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of deposits maturing during a financial year and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

d) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of 5 years had lapsed since the date of making good the default; and

e) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

**Exemptions to Private Limited Companies**

In case of private company - Points (a) to (e) above shall not apply to private Companies-

A. which accepts from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves, and securities premium accounts, or

B. which is a start-up, for five years from the date of its incorporation; or

C. which fulfils all of the following conditions, namely: -

   a. It is not an associate or a subsidiary company of any other company;

   b. if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and

   c. such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

   Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified (i.e. in Form DPT-3).

**Concept Problem 5 *[ICAI SM] [ICAI May 2019]***

State, with reasons, whether the following statements are True or False?

(i) ABC Private Limited may accept the deposits from its members to the extent of 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is 50.00 Lakh.

(ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

**Answer**

i) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Therefore, the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of INR 50.00 lakh is True.

ii) A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

**Concept Problem 6** ***[ICAI SM] [ICAI Nov 2019]***

Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not;

a. 5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.

b. 2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of INR 1,50,000 under a contract of employment with the company in the nature of non-interest-bearing security deposit.

c. Amount of INR 3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.

**Solution**

**Deposit:** According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India.
Amounts received by the company will not be considered as deposit: In terms of Rule 2(1)(c) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers-

i) In the first case, where INR 5,00,000 raised by the Rishi Ltd. through issue of non- convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of the said rule.

ii) In the second case, INR 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of INR 1,50,000 under a contract of employment with the company in the nature of non-interest-bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit.

iii) In the third case, amount of INR 3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

**Concept Problem 7** ***[ICAI SM] [ICAI May 2018]***

Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

**Solution**

**Appointment of Trustee for Depositors:** In this respect following provisions are required to be observed as mentioned in Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014:

i) One or more trustees for depositors need to be appointed by the company for creating security for the deposits.

ii) A written consent shall be obtained from the trustees before their appointment.

iii) A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.

iv) The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

v) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:

   a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;

   b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

   c) has any material pecuniary relationship with the company;

   d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;

   e) is related to any person specified in clause (a) above.

vi) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

**Concept Problem 8 *[ICAI SM]***

What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

**Answer**

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 and Rule 3(8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency.

The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

As per Rule 3 (8), copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.

Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

**Concept Problem 9** ***[ICAI SM] [ICAI May 2019] [MTP Nov 2020]***

State, with reasons, whether the following statements are True or False?

a. ABC Private Limited may accept the deposits from its members to the extent of INR 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is INR 50.00 Lakh.

b. A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.

**Answer**

a) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Therefore, the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of INR 50.00 lakh is True.

b) A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

**Concept Problem 10** ***[RTP May 2019]***

Ashish Ltd. having a net-worth of INR 80 crores and turnover of INR 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members.

**Solution**

**Acceptance of deposit from public:** According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed

Since, Ashish Ltd. has a net worth of INR 80 crores and turnover of INR 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfil the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

# ARISE AWAKE AND STOP NOT TILL YOUR GOAL IS ACHIEVED

*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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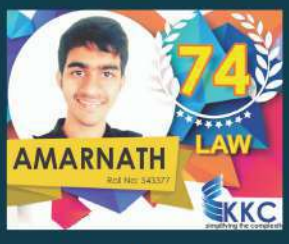




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# CHAPTER 6
# CHARGES

## 1. PRACTICAL QUESTIONS

**Concept Problem 1 *[ICAI SM]***

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

**Solution:**

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

a) in case property is situated outside India: where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;

b) in case property is situated in India (whether wholly or partly): where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

**Concept Problem 2 *[ICAI SM]***

Briefly explain the provisions enforced by the Companies (Amendment) Second Ordinance, 2019 when a charge created before 02-11-2018 is not registered within the prescribed period of thirty days as provided in Section 77 (1).

**Solution**

As per section 77(1) of the companies Act, 2013 every company creating a charge:

a) within or outside India,
b) on its property or assets or any of its undertakings,
c) whether tangible or otherwise, and
d) situated in or outside India,

is required to register the particular of the charge with the registrar within thirty days of its creation.

In case the charge was created before 02-11-2018 and it was not registered within the prescribed period of thirty of its creation, clause (a) of the first Proviso to Section 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of **300 days** of such creation.

Further, if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

**Note:** The Companies (Amendment) Second Ordinance, 2019 stand enforced w.e.f. 02-11-2018.

**Concept Problem 3 *[ICAI SM] [MTP May 2019]***

Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

**Solution**

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

**Punishment for contravention –** According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under chapter VI, a penalty shall be levied, ranging from INR 1 lakh to 10 lakhs.

Every defaulting officer is punishable with imprisonment for a term not exceeding 6 months or fine which shall not be less than 25,000 rupees, but not exceeding 1 lakh rupees or both.

Every defaulting officer is punishable with imprisonment maximum up to six months or with minimum of INR Twenty – five thousand and maximum of INR one lakh, or with both.

Further, if any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

**Concept Problem 4 *[ICAI SM] [MTP Nov 2019]***

Renuka Soaps and Detergents Limited realised on 2nd May 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

**Answer**

The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay advalorem fees.

Since first sixty days from creation of charge were expired on 11th May, 2019, Renuka soaps and Detergents limited can still get the charge registered within a further period of sixty days from 11th May 2019, after paying the prescribed advalorem fees. The company is required to make an application to the registrar in this respect giving sufficient cause for non – registration of charge.

**Concept Problem 5 *[ICAI SM] [MTP Nov 2019]***

Mr Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

**Solution**

**Notice of Charge:** According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Antriksh, therefore, was ought to have been careful while purchasing property and should have noticed beforehand that NRT Limited had already created a charge on the property.

Thus, the contention of NRT Ltd. is correct.

**Concept Problem 6 *[ICAI SM]***

Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in Register of Charges.

**Solution**

Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

a) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;

b) when there was omission or mis – statement of any particulars in any filling previously made to the registrar, such filling may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under section 82 (company to report satisfaction of charge) or section 83 (power of registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person and order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

**Concept Problem 7 *[ICAI SM] [RTP Nov 2019] [RTP Nov 2020]***

What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company? Discuss as per the provisions of the Companies Act, 2013.

**Solution**

Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of certificate: As per rule 8 (2), in case the registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in form no. CHG-5.

**Concept Problem 8 *[ICAI SM] [MTP Nov 2020]***

Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

**Answer**

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

**Information to affected parties:** The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

**Issue of Certificate:** As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

**Concept Problem 9 *[ICAI SM] [MTP Nov 2020]***

ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another INR 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

**Answer**

The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013

Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

a. when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;

b. when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission

or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore, Z Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient

**Concept Problem 10 *[ICAI May 2019]***

(i) The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

(ii) The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

**Answer**

**(i)** According to the proviso to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. Hence, the given statement is True.

**(ii)** As per section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

Hence, the given statement is True.

**Concept Problem 11**

State, with reasons, whether the following statements are True or False?

a) The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

b) The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

**Answer**

According to the proviso to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. Hence, the given statement is True.

As per section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

**Concept Problem 12 *[ICAI Nov 2019]***

DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank

to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

**Answer**

**Intimation regarding Satisfaction of Charge**

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

**Extended period of intimation:** Proviso to Section 82 (1) extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees

| **Concept Problem 13** | **[Nov 2007] [June 2009] *[Sec 79]*** |
|---|---|
| While sanctioning working limit, the rate of interest has been fixed at a specified percentage above the bank rate as notified by the Reserve Bank of India.<br>There was a change in the interest rate due to Reserve Bank of India notification issued later. The bank insisted on filing a return of modification of charges. Is the stand of bank correct? Discuss in the light of the provisions of the Companies Act, 2013. | |
| **There is no modification of charge** | - Since a change in the interest rate due to change in Bank Rate of RBI does not amount to a modification in terms and conditions of the charge.<br>- Since the Department of Company Affairs has also advised the same. |
| **The stand of the Bank is not correct** | - Since there is no modification of charge and so sec 79 is not attracted. |

## 2. True or False

State whether the following are True or False and give reasons (1 Mark each):

| | | |
|---|---|---|
| **1** | **May 2013** | If a registerable charge is not registered, the debt is not recoverable.<br>**Ans.** The given statement is False.<br>**Reason.** As per sec. 77, where a charge required to be registered is not registered, the obligation to repay the amount secured by the charge remains unaffected. Thus, the company remains liable for the repayment of the money secured by the charge even though such charge is unregistered. |

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*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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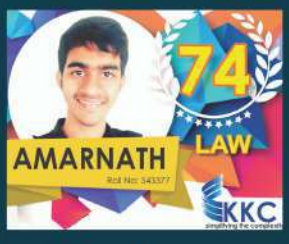




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# CHAPTER 7A
# MANAGEMENT & ADMINISTRATION –I
## (REGISTERS AND RETURNS)

## 1. PRACTICAL QUESTIONS

**Concept Problem 1** ***[ICAI SM] [May 2006] [May 2007] [RTP Nov 2019]***

Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.

**Or**

C, a member of LS & Co. Ltd, holding some shares in his own name on which final call money has not been paid, is denied by the company voting right at a general meeting on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him.

With reference to the provisions of the CA, 2013, examine the validity of company's denial to C of his voting right.

**Answer**

Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid.

**Concept Problem 2** ***[ICAI SM] [May 2006] [May 2007]***

Zorab Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

**Solution**

Under section 102(2)(b) in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:

a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

   i) every director and the manager, if any;

   ii) every other key managerial personnel; and

   iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The

information about the amount is a material fact with reference to the proposed increase of share capital.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013 as notice given or any resolution passed in the GM without containing the explanatory statement or without disclosing the material facts is invalid.

**Concept Problem 3 *[ICAI SM] [ICAI May 2009]***

M.H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered in such meeting. Mr. A, a shareholder of the M.H. Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M.H. Company Limited regarding issue of sweat shares valid according to the provision of the Companies Act, 2013? Explain fully.

**Answer**

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such person; and

b) any other information and facts that may enable members to understand the meaning, scope and implications of the item of the business and to take decision thereon.

Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under Section 102 of Companies Act 2013.

**Concept Problem 4 *[ICAI SM] [ICAI May 2005] [May 2017] [RTP May 2018] [MTP Nov 2019]***

In a General Meeting of Alpha Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013?

**Or**

The minutes of the meeting must contain fair and correct summary of the proceeding thereat. Can the chairman direct exclusion of any matter from the minutes? Some of the shareholders insist on inclusion of certain matters which are regarded as defamatory of a director of the company. The chairman declines to do so. State how the matter can be resolved.

**Solution**

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

a) is or could reasonably be regarded as defamatory of any person;

b) is irrelevant or immaterial to the proceeding; or

c) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub- section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

**Concept Problem 5 *[ICAI SM] [RTP Nov 2018] [MTP Nov 2019]***

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

i) In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

**Solution**

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that

**Order of demand for poll by the chairman of meeting**: Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf

a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

**Withdrawal of the demand**: The demand for a poll may be withdrawn at any time by the persons who made the demand. Hence, on the basis on the above provisions of the Companies Act, 2013:

i) The chairman cannot reject the demand for poll as poll can be demanded by the members present in person or by proxy. subject to provision in the articles of company.

ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

**Concept Problem 6** ***[ICAI SM] [ICAI Nov 2018] [MTP Nov 2018] [RTP May 2020]***

The Articles of Association of DJA Ltd. require the personal presence of 7 members to constitute quorum of General Meeting to be held on 11th March 2018. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director. On 11th March, 2018 following persons were present by 11:30 A.M

i) A, the representative of Governor of Uttar Pradesh.
ii) B and C, shareholders of preference shares.
iii) D, representing Y Ltd. and Z Ltd.
iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

Suppose, D representing Y Ltd. And Z Ltd. reached in the meeting after 11:30 AM?

**Solution**

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

- 'A' will be included for the purpose of quorum.
- B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights.
- D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.'
- E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

**Second part:** The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, D is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

**Concept Problem 7** ***[ICAI SM] [MTP Nov 2018] [MTP May 2019]***

A General Meeting was scheduled to be held on 15th April, 2017 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10 -04-2017 was deposited by Mr. Y with the company at its registered Office on 11-04-2017. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2017 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2017. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent at proxies for members X and W respectively?

**Solution**

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

**Concept Problem 8** ***[ICAI SM] [MTP Nov 2018]***

S, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions?

**Solution**

Under section 105 of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, S has given proper notice.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, S can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

**Concept Problem 9** ***[ICAI SM] [MTP May 2019]***

The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

**Solution**

According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

**Concept Problem 10** ***[ICAI SM] [ICAI May 2007] [MTP May 2019]***

Miraj Limited held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2018, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

**Or**

XYZ Limited held its annual general meeting on September 15, 2006. The meeting was presided over by Mr. V, the chairman of the company's Board of Directors. On September 17, 2006, Mr. V without signing the minutes of the meeting left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act 2013, state the manner in which the minutes of the above meeting are to be signed in the absences of Mr. V and by whom.

**Solution**

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration ) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

**Concept Problem 11** ***[ICAI SM] [ICAI May 2018]***

M/s. Tulip Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.

ii) Does Mr. Rich, director (but not a shareholder) of the company have the right to inspect the register of members?

**Solution**

**i)** **Maintenance of the Register of Members etc.**: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

**ii)** As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture- holders, other security holders or beneficial owners of the company.

Accordingly, a director Mr. Rich, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

[**Note:** A presumption may be taken with respect to payment of fees. In such a case, any other person (other than specified above) may also inspect the Register of members of company]

**Concept Problem 12** ***[ICAI SM] [ICAI May 2018] [RTP Nov 2019] [RTP May 2020]***

Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

**Answer**

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the first AGM of Infotech should have been held on or before 31st December, 2017. Further, the Registrar does

not have the power to grant extension to time limit

**Concept Problem 13 *[ICAI SM]***

What do you mean by Proxy? Explain the provisions relating to appointment of proxy under Companies Act, 2013.

**Answer**

A proxy is an instrument in writing executed by a shareholder authorising another person to attend a meeting and to vote thereat on his behalf and in his absence. The term also applies to the person so appointed in such case a proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy is contained in section 105 of the Companies Act, 2013 are as under:

i) Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

ii) A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.

iii) The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

iv) Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

v) Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

**Concept Problem 14 *[ICAI SM] [Nov 2007] [MTP Nov 2020] [May 2019]***

Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2019. The notice was posted to the members on 16th October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

i) Whether the meeting has been validly called?

ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

iii) Can the delay in giving notice be condoned?

**Answer**

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been affected - in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted.

Hence, in the given question:

i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

ii) As explained in (i) above, notice falls short by 2 days.

iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

**Concept Problem 15 *[ICAI SM]***

KMN Ltd. scheduled its Annual General Meeting to be held on 11th March, 2019 at 11:00 A.M. The company has 900 members. On 11th March, 2019 following persons were present by 11:30 A.M.

1. P1, P2 & P3 shareholders
2. P4 representing ABC Ltd.
3. P5 representing DEF Ltd.
4. P6 & P7 as proxies of the shareholders

**i)** Examine with reference to relevant provisions of Companies Act, 2013, whether quorum was present in GM.

**ii)** What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?

**iii)** In case lack of Quorum, discuss provisions applicable for an adjourned meeting in terms of date, time & place.

**iv)** What happens if there is no Quorum in the Adjourned meeting?

**Answer**

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

**i)** (1) P1, P2 and P3 will be counted as three members.

(2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.

(3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

**ii)** The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

**iii)** In case of lack of quorum, the meeting will be adjourned as provided in section 103.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

**iv)** Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

**Concept Problem 16 *[ICAI SM] [ICAI May 2018]***

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The

directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

**Solution**

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, within the time specified under section 403.

Sub-section (5) of Section 92 also states that if a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect.

In the above case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

**Concept Problem 17 *[MTP Nov 2018] [ICAI May 2018]***

Examine the following with reference of the provisions of the Companies Act, 2013.

"Miraj Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. S and Mr. P as directors). The chairman decided to move the resolutions for all the nine businesses together to save time".

**Solution**

For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the Annual General Meeting. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.

One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution.

Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. S and Mr. P as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

**Concept Problem 18 *[MTP May 2019]***

Primal Limited is a company incorporated in India. It owns two subsidiaries - Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:

a. EGM be held in India

b. EGM be held in Netherlands

**Solution**

According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the light of the above provisions:

a) The Board of Directors can call the EGM in India.

b) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

**Concept Problem 19 *[ICAI May 2018]***

As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it.

**Solution**

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
11. Such other matters as may be prescribed.

**Concept Problem 20 *[ICAI Nov 2018]***

Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.

**Answer**

**Resolutions requiring special notice [Section 115]**

Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding INR 5,00,000/- has been paid-up.

In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, Section 115 of the Act specifies that special notice is required to appoint as auditor a person other than a retiring auditor under Section 140 of the Act.

According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power

**Concept Problem 21 *[MTP Nov 2020] [ICAI Nov 2018]***

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

**Or**

Due to heavy rains and floods, Chennai Handloom Limited was unable to convene annual general meeting upto 30th September 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92 of the Companies Act 2013. Discuss whether the contention of directors is correct.

**Answer**

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

In the instant case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. The idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

**Concept Problem 22 *[RTP Nov 2019]***

Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard.

Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ.

**Answer**

According to section 96(2) of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Thus, in the first case, the company is rightful in calling the Annual General meeting at Ansal Plaza.

In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

**Concept Problem 23 *[ICAI May 2019]***

Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India. Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?

**Answer**

According to section 103(1)(a)(i) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of public company, if the number of members as on the date of meeting is not more than one thousand, five members personally present shall be the quorum for a meeting of the company. In the instant case, the quorum for the public company will be 5 members personally present.

In the said company, two members are bodies corporate and one member is the President of India Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

As per section 113 of the Companies Act, 2013, if a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum and shall be entitled to vote.

As per section 112 of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.

**Concept Problem 24 *[ICAI May 2019]***

If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy?

**Answer**

According to Rule – 20(4)(iii)(C) of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot changed his vote subsequently and is not permitted to appoint a proxy.

**Concept Problem 25 *[ICAI May 2019]***

X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013.

Would your answer differ if Mr. Ravi is a shareholder of X Ltd.?

**Answer**

According to section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.

In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

**Concept Problem 26** ***[ICAI Nov 2005] [MTP Nov 2019]***

At a General meeting of a XYZ Limited, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.

**Answer**

Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

a) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;

b) The notice required under the Companies Act must have been duly given of the general meeting;

c) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

**Concept Problem 27** ***[ICAI Nov 2019]***

Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

(i) Resolution to increase the Authorised share capital of the company.

(ii) Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013?

**Answer**

Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), an explanatory a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely: -

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:

  i) every director and the manager, if any;

  ii) every other key managerial personnel; and

  iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

**Part (i) of the question** relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

**Part(ii)** is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

| **Concept Problem 28** | **[Nov 2006] *[Sec 103]*** |
|---|---|
| DJA company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the company for amending the terms of these shares. Mr. A was the only preference shareholder who attended the meeting. He however held proxies from all other shareholders. He took the chair conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the Companies Act, 2013, examine the validity of the meeting and the resolution passed thereat. | |
| **Sharp V Dawes** | - A meeting means coming together of more than one person. Therefore, one member cannot constitute a meeting. |
| **The meeting and resolutions passed thereat are not valid** | - Since presence of a single member does not constitute a meeting.<br>- Since same judgment was given in Sharp v Dawes. |

| **Concept Problem 29** | **[Nov 2008] *[Sec 103]*** |
|---|---|
| State the legal position in the following circumstance with reference to the Companies Act 2013. At an adjourned extraordinary general meeting of a public Ltd. company adjourned for want of quorum, only 3 members are personally present. | |

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| **The quorum is present at the adjourned EGM** | - Since if an EGM is not held for want of quorum and at the adjourned EGM also quorum is not present within half an hour from the time fixed for holding the adjourned EGM, then the members present shall be the quorum [Sec. 103(3)]. |

| **Concept Problem 30** | **[June 2009] *[Sec 103]*** |
|---|---|
| The Board of Directions of ABC Limited called an EGM of the company to transact certain urgent matters. The meeting could not be held for want of requisite quorum. As a result, the meeting was adjourned to next week. Again, at the adjourned meeting also, the requisite quorum was not present. Members present at this meeting held the meeting and passed certain resolutions.<br>With reference to provisions of Companies Act, 2013, examine the validity of the meeting and state whether resolutions passed at such meeting shall be binding upon the company and its members. | |
| **The resolutions passed at the EGM are valid and binding** | - Since if an EGM is adjourned for want of quorum and the required quorum is again not present in the adjourned EGM, then the members present shall be deemed to be the quorum [Sec. 103(3)] |

| **Concept Problem 31** | **[May 2015] *[Sec 103]*** |
|---|---|
| The annual general meeting of KMP Limited was held on 30th April 2015. The Articles of Association of the company are silent regarding the quorum of the general meeting. Only 10 members were personally present in the above meeting out of the total 2,750 members of the company. The chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act 2013, examine the validity of chairman's decision. | |
| **The required quorum is** | - 15 members personally present since the total number of members of the company exceed 1,000 but does not exceed 5,000. |
| **The AGM shall automatically adjourn** | - To the same day, time and place in the next week or to such other date, time and place as the Board may determine since the quorum is not present within half an hour from the time fixed for the commencement of the meeting. |
| **The question of adjournment by the chairman does not arise** | - Since in case of absence of quorum, the meeting automatically adjourns without requiring any directions by the chairman regarding adjournment. |

| **Concept Problem 32** | **[May 2010] [Nov 2013] *[Sec 105]*** |
|---|---|
| K, a member of MNO Limited appoints L as his proxy to attend the general meeting of the company. Later, he (K) also attends the meeting. Both K (the member) and L (the proxy) vote on a particular resolution in the meeting. K's vote was declared invalid by the chairman stating that since he has appointed the proxy, L's vote has been considered as valid. K objects to the decision of the chairman. Decide under the provision of the Companies Act 2013, whether K' s objections shall be tenable.<br>**Or**<br>A, a shareholder of a company appointed B, as a proxy to attend the general meeting of the shareholders. Later on, A himself attended the meeting and voted on a resolution. Decide whether A can do so? | |
| **The appointment of L as proxy is revoked** | - When K, the member himself attends the GM. |
| **Vote of L, the proxy is void** | - Since when K, the member himself attends the GM, the proxy is revoked and so L has no right to vote. |
| **K's objection is tenable** | - Since the chairman has erroneously considered vote as valid. |

| **Concept Problem 33** | **[May 2008] *[Sec 105]*** |
|---|---|
| The chairman of the meeting of a company received a proxy 54 hour before the time fixed for the start of the meeting. He refused to accept the proxy on the ground that the articles of the company provided that a proxy must be filed 60 hours before the start of the meeting. Decide under the provisions of the Companies Act 2013, whether the proxy holder can compel the chairman to admit the proxy? | |
| **The refusal of the chairman is not valid** | - Since a proxy lodged with the company 48 hours before the time fixed for commencement of the meeting is valid.<br>- Since the time limit of 48 hours can be decreased but cannot be increased. |

| Concept Problem 34 | [June 2009] *[Sec 105]* |
|---|---|
| Annual general meeting of MGR Limited is convened on 28th December, 2013. Mr. J, who is a member of the company approaches the company on 28th December 2013 and demands inspection of proxies lodged with the company. Explain the legal position as stated under the Companies Act 2013 in this regard. | |
| **Mr. J is not entitled to inspect proxies** | - Since a member who intends to inspect the proxies has to give notice to the company of his intention to do so at least 3 days before the commencement of the GM. |

| Concept Problem 35 | [June 2009] *[Sec 105]* |
|---|---|
| Golden Private Limited, in its articles of association, provides a format of proxy form different from the one prescribed under the Companies Rules, 2014. S, a shareholder submits an instrument appointing proxy to the company in the form as prescribed under the Companies Rules, 2014. The company rejects the proxy on the ground that it is not in the form as prescribed in articles of association of the company. Is the rejection valid under the provisions of Companies Act 2013? Decide giving reasons. | |
| **The rejection of proxy form by the company is not valid** | - Since a company cannot reject a proxy form if it in the same form as may be prescribed (Form No. MGT 11 has been prescribed for appointment of the proxy).<br>- Even though the proxy form used by the member does not comply with any special requirement specified in the articles of the company. |

| Concept Problem 36 | [Nov 2007] *[Sec 105 and 113]* |
|---|---|
| What is the concept of proxy in relation to the meetings of a company? Decide the appointment and rights of a proxy under the Companies Act, 2013 in the following cases:<br>i. When a body corporate is a member in the company.<br>ii. When a foreign company is a member in the company. | |
| **A body corporate is entitled to appoint a representative** | - As per the provisions of sec. 113.<br>- Such representative shall be entitled to exercise the same rights and powers on behalf of such body corporate as if it were an individual member. |
| **The foreign company is also entitled to appoint a representative as per sec. 113** | - Since the provisions of sec. 113 are applicable not only to companies but also to foreign companies.<br>- Since sec 113 uses the words "a body corporate". |

| Concept Problem 37 | [May 2005] |
|---|---|
| As a corporate professional, advise your client company whether the following matters can be transacted by getting a resolution passed through postal ballots:<br>i. Issue of shares with differential voting rights.<br>ii. Sale of whole of the undertaking of a company.<br>iii. Buy back of own shares by the company. | |
| **Issue of shares with differential voting rights** | - Shall be transacted by passing a resolution by postal ballot.<br>- Unless the company is OPC or the number of members of the company is up to 200. |
| **Sale of whole of the undertaking of a company** | - Shall be transacted by passing a resolution by postal ballot.<br>- Unless the company is OPC or the number of members of the company is up to 200. |
| **Buy back of own shares by the company** | - Shall be transacted by passing a resolution by postal ballot.<br>- Unless the company is OPC or the number of members of the company is up to 200. |

| Concept Problem 38 | *[June 2009] [Nov 2008] [Sec 106]* |
|---|---|
| The articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there in the register of members for two months before the date of the meeting. X, a member of the ABC Limited was holding 200 equity shares of the company. X transferred his shares to Y before one month from the date on which the meeting was due. The name of Y could not be entered in the register of members as the application of transfer of shares was pending. X attended the meeting but he was prohibited by the company from | |

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| exercising his voting right on the ground that he has not held his shares for specified period as provided in the articles before the date of the meeting.<br>State whether X can exercise his voting in the meeting? State also the grounds upon which X may be excluded from exercising his voting rights in the meeting of the shareholders. | |
| **X is entitled to vote at the GM** | - Since a company cannot restrict the voting rights of a member on any ground other than the grounds specified u/s 106.<br>- Since the restriction of voting right on the ground that a member has not held his shares for 2 months is not a specified ground u/s 106. |

**Concept Problem 39** **[Nov 2005] [May 2010] *[Sec 106]***

J held 100 partly paid up shares of LKM Limited. The company asked him to pay the final call money at the shares. Due to some unavoidable circumstances, he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. J contested the decision of the chairman. Referring to the provisions of the Companies Act 2013, decide whether the contention of J is valid.

**Or**

C, a member of LS & Co. Ltd, holding some shares in his own name on which final call money has not been paid, is denied by the company voting right at a general meeting on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him.

With reference to the provisions of the CA, 2013, examine the validity of company's denial to C of his voting right.

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| **The contention of J is not valid** | - Since he is restrained from exercising his voting right on one of the grounds specified u/s 106.<br>- Since the ground restricting voting right is contained in the articles. |

**Concept Problem 40** **[Nov 2007] *[Sec 114]***

For a special resolution in a company's general meeting, 10 voted in favour, 2 against and 4 abstained. The chairman declared the resolution as passed. Is it a valid resolution as per the provisions of the Companies Act 2013?

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| **Votes cast in favour** | - 10 |
| **Votes cast against the Resolution** | - 2 |
| **Members abstained from voting** | - 4 |
| **SR is passed** | - Since votes cast in favour of the resolution are not less than 3 times the votes cast against the resolution.<br>- Since votes cancelled, absent members and members abstaining from voting are ignored for the purpose of counting of votes. |

**Concept Problem 41** **[Nov 2007] *[Sec 114]***

Developers Ltd. held a General Meeting of shareholders for passing a special resolution regarding alteration of articles of association. Out of the members present in the meeting, 20 voted in favour, 4 against and 8 members did not vote and abstained from voting. The chairman of the meeting declared the resolution as passed. Is it a valid resolution as per the provisions of the Companies Act 2013?

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| **Votes cost in favour** | - 20 |
| **Votes cost against the resolution** | - 4 |
| **Members abstained from voting** | - 8 |
| **SR is passed** | - Since votes cast in favour of the resolution are not less than 3 times the votes cast against the resolution.<br>- Since votes cancelled, absent members and members abstaining from voting are ignored for the purpose of counting of votes. |

**Concept Problem 42** **[May 2008] *[Sec 118]***

MN Limited held its annual general meeting on 27th march 2008. Mr. M the chairman of the said meeting died on 1st April 2008 when minutes of the annual general meeting were not yet recorded and signed. How would you deal

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| with the situation? Would year answer be different in case the meeting held on 27th March 2008 was a board meeting? | |
| **Minutes of AGM are to be signed by a director duly authorised by board** | - Within 30 days of the conclusion of AGM i.e. on or before 26.04.2008<br>- Since in case of death or inability of the chairman of the same GM the minutes are to be signed by a director duly authorised by the board in this behalf. |
| **In case the meeting held was a board meeting then** | - The minutes are required to be signed within 30 days of the conclusion of such meeting.<br>- By the chairman of the same meeting viz 27.03.08 or the chairman of next succeeding board meeting. |

**Concept Problem 43** **[May 2006] [May 2013] [Nov 2017] *[Sec 100]***

To remove the managing directors, 40% members of Global Ltd. submitted requisition for holding extra ordinary general meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the managing director did not allow the holding of meeting at the registered office of the company, the said meeting was held at some other place and a resolution for removal of the managing director was passed. Examine the validity of the said meeting and resolution passed therein in the light of the provisions of the Companies Act, 2013.

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| **The requisition is valid** | - Assuming that the requisitionists hold at least 10% of the paid-up share capital of the company.<br>- Since the requisition need not disclose the reasons behind the resolution proposed at the EGM. |
| **Holding of EGM at a place other than the registered office is valid** | - Since the Board failed to call the EGM within the time prescribed u/s 100, thereby entitling the members to call, hold and conduct the EGM.<br>- Since the registered office was kept locked and so it was not possible for the requisitionists to hold the EGM in the same manner in which GMs are ordinarily held at the registered office of the company. |
| **Resolution removing the MD is valid** | - Since the EGM was called, held and conducted and the resolution removing MD was passed in accordance with the provisions of the Companies Act 2013. |

**Concept Problem 44** **[Nov 2004] *[Sec 105]***

Annual general meeting of a public company was scheduled to be held on 15.12.2003. Mr. A, a shareholder issued two proxies in respect of the shares held by him in favour of Mr. X and Mr. Y. The proxy in favour of Y was lodged on 12.12.2003 and the one in favour of Mr. X was lodged on 15.12.2003. the company rejected the proxy in favour of Mr. Y as the proxy in favour of Mr. Y was of dated 12.12.2003 and that in favour of Mr. X was of dated 13.12.2003. Is the rejection by the company in order?

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| **Proxy in favour of Y** | - Dated 12.12.2003 lodged with the company on 12.12.2003 |
| **Proxy in favour of X** | - Dated 13.12.2003 lodged with the company on 15.12.2003 |
| **Proxy in favour of X shall be rejected** | - Since proxy form appointing X as proxy was not lodged with the company within the prescribed time i.e. at least 48 hours before the AGM. |
| **Proxy in favour of Y shall be valid** | - And therefore, the action taken by the company is not valid. |

**Concept Problem 45** **[May 2017] *[Sec 105]***

A general meeting was scheduled to be held on 15th April 2016 at 4.00 PM. As per the notice, the member who are unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2016 was deposited by Mr. Y with the company at its registered office on 11.04.2016. However, Mr. X changes his mind and on 12.04.2016 gives another proxy to Mr. Z and it was deposited on the same day with company. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2016 was deposited with the company on the same day and the proxy from in favour of Mr. N was deposited on 14-04-2016. All the proxies viz, Y, Z, M and N were present before the meeting.

According to the provisions of the Companies Act 2013, who would be the persons allowed to represent as proxies for member X and W respectively.

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| **Proxy appointed by Mr. X in favour of Mr. Y** | - Is dated 10-04-2016 and is deposited with the company on 11.04.2016 |

| | |
|---|---|
| **Proxy appointed by Mr. X in favour of Mr. Z** | - Is dated 12.04.2016 and is deposited with the company on same day viz, 12.04.2016<br>- |
| **Mr. Z shall be allowed as proxy for Mr. X in the GM** | - Since proxy from appointing Mr. Z as proxy was signed by the member, Mr. X later in point of time and it was deposited with the company within the prescribed time i.e. at least 48 hours before the GM. |
| **Proxy appointed by Mr. W in favour of Mr. M** | - Is dated 12.04.2016 and is deposited with the company on same day viz. 12.04.2016 |
| **Proxy appointed by Mr. W in favour of Mr. N** | - Is dated 12.04.2016 and is deposited with the company on 14.04.2016 |
| **Proxy appointed by Mr. W in favour of Mr. N shall be rejected** | - Since proxy from appointing N as proxy was not deposited with the company within the prescribed time, i.e at least 48 hours before the GM. |
| **Mr. M shall be allowed as proxy for Mr. W in the GM** | - Since by reason of rejection of proxy from in favour of Mr. N, only one valid proxy form in favour of Mr. M has reached the company within the prescribed time of at least 48 hours before the GM. |

## 2. TRUE OR FALSE

State whether the following are True or False and give reasons (1 Mark each):

| | | |
|---|---|---|
| **1** | **Nov.2017** | Proxy has no right to speak at the general meeting of the company.<br>**Ans.** The given statement is **True.**<br>**Reason:** As per sec. 105, a proxy shall not have any right to speak at the company. |
| **2** | **Nov. 2013**<br>**Nov. 2015** | A special resolution is one to pass, where the votes cast in favour must be twice the votes cast against it.<br>**Ans.** The given statement is **False.**<br>**Reason:** As per sec. 114, a special resolution is one in which the votes cast in favour of the resolution is not less than 3 times the votes cast against the resolution. |
| **3** | **Nov. 2014** | Under the Companies Act, 2013, if the general meeting is adjourned for want of quorum, then in case of change in the day, time, place of the adjourned meeting, the company is required to give not less than 7 days' notice to the members individually or by press announcement.<br>**Ans.** The given statement is **False**.<br>**Reason:** As per sec. 103, if a general meeting is adjourned for want of quorum then at least 3 days' notice of such adjourned meeting shall be given to the members either individually or by publishing an advertisement in the newspaper (one in English and one in vernacular language). |
| **4** | **May 2016** | Quorum for general meeting for a public company where members are not more than 1000 is 5 members personally present.<br>**Ans.** The given statement is **True**<br>**Reason:** As per sec.103, unless the Articles require a larger quorum, the quorum for any general meeting of a public company is 5 members personally present if the number of members is not more than 1,000. |
| **5** | **Nov. 2010** | A company shall file its annual return within six months of the closing of the financial year.<br>**Ans.** The given statement is **False**<br>**Reason:** As per sec. 92, annual return is to be filed within 60 days of the day on which AGM is held. |

## 3. QUESTIONS

**1)** Referring to the Companies Act, 2013, state the matters relating to ordinary business which may be transacted at the annual general meeting of the company. What kind of resolutions need to be passed to transact the ordinary business and the special business at the annual general meeting of the company? Explain. **[Nov 2006] [May 2012] [May 2014]**

**2)** State what is meant by quorum and when can quorum be considered immaterial under the provisions of the Companies Act, 2013. **[May 2005]**

**3)** Explain the provisions of the Companies Act, 2013 relating to "Resolutions requiring Special Notice". State the resolutions that require special notice under the Act. **[Nov 2006] [May 2016] [May 2017]**

**4)** Explain the concept of electronic voting system as provided by the Companies Act, 2013. **[May 2015]**

**5)** Explain the provisions of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the general meeting of members of a company through postal ballot. **[Nov 2003]**

**6)** State the provisions of the Companies Act, 2013 regarding calling and holding an extraordinary general meeting with respect to number of members entitled to requisition a meeting. **[May 2005]**

**7)** SV Technologies Limited is proposing to convene a general meeting of its members. Explain briefly the provisions of the Companies Act, 2013 relating to the procedure to be followed for transacting a business of the general meeting through postal ballot. **[Nov 2016]**

# ARISE AWAKE AND STOP NOT TILL YOUR GOAL IS ACHIEVED

*-Swami Vivekanand*

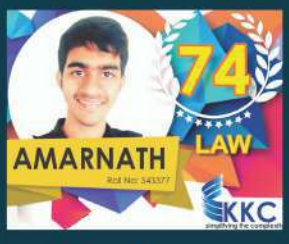
## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



## ★ OUR STARS ★





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# CHAPTER 7B
# MANAGEMENT & ADMINISTRATION – II
## (GENERAL MEETING)

## 1. PRACTICAL PROBLEMS

**Concept Problem 1 *[ICAI SM] [MTP Nov 2019]***

The Annual General Meeting of ABC Bakers Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2017. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2017. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act.

**Solution**

Section 127 of the Companies Act, 2013 lays down the penalty for non - payment of dividend within the prescribed time period. Under section 127 where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30days from the date of declaration to any shareholder entitled to the payment of the dividend:

i. every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues; and

ii. the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

Therefore, in the given case Mr Rajan will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum.

**Concept Problem 2 *[ICAI SM]***

The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid – up equity share capital which was later on approved by the shareholder at the annual general meeting. In the meantime, the directors at another meeting of the Board decided by passing a board resolution to divert the total dividend to be paid to the shareholder for purchase of certain short – term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provision of the Companies Act, 2013 state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

**Answer**

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for the punishment.

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on

its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1) Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

2) The Board of Directors of Future Fashions Limited has violated section 127 of the companies act, 2013 as it failed to pay dividend to shareholder within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short – term investments in the name of the company.

**Consequences: Following are the consequences for violation of the above provisions:**

a. Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine of INR one thousand for every day during which such default continues.

b. The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

**Concept Problem 3 *[ICAI SM] [ICAI Nov 2019]***

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

The Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

**Solution**

Prohibition on declaration of dividend: Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. So according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

**Concept Problem 4 *[ICAI SM] [MTP Nov 2019]***

Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2018-19, except in the following two cases:

a) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.

b) Dividend amount of INR 50,000 was not paid to the successor of Late Mr. Mohan, in view of the court order restraining the payment due to family dispute about succession. You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

**Solution**

a) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

b) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

**Concept Problem 5 *[ICAI SM] [ICAI May 2019]***

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. ·Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

**Answer**

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.
In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

**Concept Problem 6 *[ICAI SM]***

Alex limited is facing loss in business during the financial year 2018-2019. In the immediately preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with the immediately preceding year. Is the act of the Board of Directors valid?

**Solution**

As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2018-2019 is not valid.

**Concept Problem 7 *[ICAI May 2019]***

Alpha Ltd. A section 8 company is planning to declare divided in the annual General Meeting for the Financial Year ended 31-03-2019. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

**Solution**

Prohibition on section 8 companies: According to Section 8(1) of the Companies Act, 2013, the companies having licence under Section 8 (Formation of companies with Charitable Objects, etc.) of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the company.

Hence, in the instant case, the proposed act of Alpha Ltd., a company registered under the provisions of Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

**Concept Problem 8** ***[ICAI Nov 2018] [MTP May 2019] [MTP Nov 2020]***

a) YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2018 -19 out of the current year profits. The company has earned a profit of Rs. 910 crores during 2018-19. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment.

b) Karan was holding 5000 equity shares of Rs. 100 each of M/s. Future Ltd. A final call of Rs. 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

**Solution**

**a) Transfer to reserves (Section 123 of the Companies Act, 2013):**

A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of Rs. 910 crores for the financial year 2018-19. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

**b)** As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-.

**Concept Problem 9** ***[RTP May 2018] [MTP Nov 2018]***

The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

i) Mr. A, holding equity shares of face value of INR 10 lakhs has not paid an amount of INR 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

**Solution**

i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due

from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of INR 10 Lakhs and has not paid an amount of INR 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get INR 1.20 lakh towards dividend, out of which an amount of INR 1 lakh can be adjusted towards call money due on his shares. INR 20,000 can be paid to him in cash or by cheque or in any electronic mode. According to the above, mentioned provision, company can adjust sum of INR 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

**Concept Problem 10** ***[MTP May 2019] [ICAI May 2018] [MTP May 2020]***

AT Ltd. incurred loss in business upto current quarter of financial year 2017 -18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediately preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of TAT Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

**Solution**

Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by TAT Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. (12+15+18)/3 = 45/3 =15%]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

**Concept Problem 11** ***[RTP May 2019]***

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15$^{th}$ June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.

State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable?

**Solution**

As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.

**Concept Problem 12 *[ICAI Nov 2018] [MTP May 2020]***

Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September 2018. Referring to provision of the General Clauses Act 1897 and Companies Act 2013 advice:

i) The dates during which Komal Ltd. is required to pay the dividend?

ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

**Answer**

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

**i) Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018.

In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).

**ii) Transfer of unpaid or unclaimed divided:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA).

Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).

**Concept Problem 13 *[RTP Nov 2020]***

MNP Ltd. has a paid-up share capital of INR 10 crore and free reserves of INR 50 crore, as on 31st March, 2019. The company made a loss of INR 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

**Answer**

As per Second Proviso to Section 123 (1), in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.

i) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.

Amount of dividend proposed: INR 2 Crores (20% of INR 10 Crore i.e on paid up capital)

10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = INR 6 Crore.

This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

ii) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

iii) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

Balance of reserves after payment of dividend: INR 48 crore (50 crore – 2 crore) 15% of paid up share capital: 1.5 crore (15% of 10 crore) This condition is fulfilled.

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

**Concept Problem 14 *[ICAI May 2019]***

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The Directors declared the approved dividends.

Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend?

**Answer**

**Payment of dividend:** According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members. Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24th October, 2018 he will be entitled to the dividend.

## 2. TRUE OR FALSE

State whether the following are True or False and give reasons (1 Mark each):

| | | |
|---|---|---|
| **1** | **May 2007** | Dividend can be declared out of<br>a) Capital reserve<br>b) Revaluation reserve<br>c) Debenture redemption reserve<br>d) Earlier year's reserve brought forward.<br>**Ans. (d)** |

| | | |
|---|---|---|
| | | **Reason:** As per sec. 123, dividend may be declared out of the profit of the company for that year or out of the profits of the company for any previous financial year or years and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government. |
| **2** | **Nov 2016** | The shareholders of the company in general meeting cannot decrease the rate of dividend recommended by the Board of Directors.<br><br>**Ans.** The given statement is false.<br><br>**Reason:** As per regulation 80 contained in Table F of schedule I to the Companies Act, 2013, the dividend recommended by the Board cannot be increased by the members in GM, but the rate of dividend as recommended by the Board may be decreased by the members in GM. |

## 3. QUESTIONS FOR PRACTICE

**1)** State any 6 amounts that can be credited to the Investor Education and Protection Fund. Give your answer as per the provisions of the Companies Act, 2013.

# ARISE AWAKE AND STOP NOT TILL YOUR GOAL IS ACHIEVED

*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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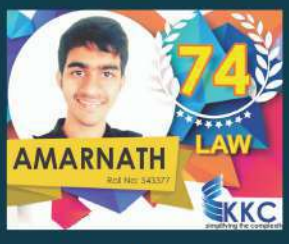




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# CHAPTER 7
# DECLARATION AND PAYMENT OF DIVIDEND

## 1. PRACTICAL PROBLEMS

**Concept Problem 1** ***[ICAI SM] [MTP Nov 2019]***

The Annual General Meeting of ABC Bakers Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2017. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2017. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act.

**Solution**

Section 127 of the Companies Act, 2013 lays down the penalty for non - payment of dividend within the prescribed time period. Under section 127 where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30days from the date of declaration to any shareholder entitled to the payment of the dividend:

i. every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues; and

ii. the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

Therefore, in the given case Mr Rajan will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum.

**Concept Problem 2** ***[ICAI SM]***

The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid – up equity share capital which was later on approved by the shareholder at the annual general meeting. In the meantime, the directors at another meeting of the Board decided by passing a board resolution to divert the total dividend to be paid to the shareholder for purchase of certain short – term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provision of the Companies Act, 2013 state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

**Answer**

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default,

be liable for the punishment.

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1) Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

2) The Board of Directors of Future Fashions Limited has violated section 127 of the companies act, 2013 as it failed to pay dividend to shareholder within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short – term investments in the name of the company.

**Consequences: Following are the consequences for violation of the above provisions:**

a. Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine of INR one thousand for every day during which such default continues.

b. The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

**Concept Problem 3 *[ICAI SM] [ICAI Nov 2019]***

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

The Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

**Solution**

Prohibition on declaration of dividend: Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. So according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

**Concept Problem 4 *[ICAI SM] [MTP Nov 2019]***

Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2018-19, except in the following two cases:

a) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.

b) Dividend amount of INR 50,000 was not paid to the successor of Late Mr. Mohan, in view of the court order restraining the payment due to family dispute about succession. You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

**Solution**

a) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

b) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

**Concept Problem 5 *[ICAI SM] [ICAI May 2019]***

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. ·Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

**Answer**

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.
In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

**Concept Problem 6 *[ICAI SM]***

Alex limited is facing loss in business during the financial year 2018-2019. In the immediately preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with the immediately preceding year. Is the act of the Board of Directors valid?

**Solution**

As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2018-2019 is not valid.

**Concept Problem 7 *[ICAI May 2019]***

Alpha Ltd. A section 8 company is planning to declare divided in the annual General Meeting for the Financial Year ended 31-03-2019. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is

according to the provisions of the Companies Act, 2013.

**Solution**

Prohibition on section 8 companies: According to Section 8(1) of the Companies Act, 2013, the companies having licence under Section 8 (Formation of companies with Charitable Objects, etc.) of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the company.

Hence, in the instant case, the proposed act of Alpha Ltd., a company registered under the provisions of Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

**Concept Problem 8** ***[ICAI Nov 2018] [MTP May 2019] [MTP Nov 2020]***

a) YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2018 -19 out of the current year profits. The company has earned a profit of Rs. 910 crores during 2018-19. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment.

b) Karan was holding 5000 equity shares of Rs. 100 each of M/s. Future Ltd. A final call of Rs. 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

**Solution**

**a) Transfer to reserves (Section 123 of the Companies Act, 2013):**

A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of Rs. 910 crores for the financial year 2018-19. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

**b)** As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-.

**Concept Problem 9** ***[RTP May 2018] [MTP Nov 2018]***

The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

i) Mr. A, holding equity shares of face value of INR 10 lakhs has not paid an amount of INR 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

**Solution**

i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of INR 10 Lakhs and has not paid an amount of INR 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get INR 1.20 lakh towards dividend, out of which an amount of INR 1 lakh can be adjusted towards call money due on his shares. INR 20,000 can be paid to him in cash or by cheque or in any electronic mode. According to the above, mentioned provision, company can adjust sum of INR 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

**Concept Problem 10** ***[MTP May 2019] [ICAI May 2018] [MTP May 2020]***

AT Ltd. incurred loss in business upto current quarter of financial year 2017 -18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediately preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of TAT Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.

**Solution**

Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by TAT Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. (12+15+18)/3 = 45/3 =15%]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

**Concept Problem 11** ***[RTP May 2019]***

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15$^{th}$ June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.

State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable?

**Solution**

As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days

from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.

**Concept Problem 12 *[ICAI Nov 2018] [MTP May 2020]***

Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September 2018. Referring to provision of the General Clauses Act 1897 and Companies Act 2013 advice:

i) The dates during which Komal Ltd. is required to pay the dividend?

ii) The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?

**Answer**

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

**i) Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018.

In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).

**ii) Transfer of unpaid or unclaimed divided:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA).

Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).

**Concept Problem 13 *[RTP Nov 2020]***

MNP Ltd. has a paid-up share capital of INR 10 crore and free reserves of INR 50 crore, as on 31st March, 2019. The company made a loss of INR 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

**Answer**

As per Second Proviso to Section 123 (1), in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.

i) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.

Amount of dividend proposed: INR 2 Crores (20% of INR 10 Crore i.e on paid up capital)

10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = INR 6 Crore.

This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

ii) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

iii) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

Balance of reserves after payment of dividend: INR 48 crore (50 crore – 2 crore) 15% of paid up share capital: 1.5 crore (15% of 10 crore) This condition is fulfilled.

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

**Concept Problem 14 *[ICAI May 2019]***

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The Directors declared the approved dividends.

Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend?

**Answer**

**Payment of dividend:** According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members. Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24th October, 2018 he will be entitled to the dividend.

## 2. TRUE OR FALSE

State whether the following are True or False and give reasons (1 Mark each):

| | | |
|---|---|---|
| **1** | **May 2007** | Dividend can be declared out of<br>a) Capital reserve<br>b) Revaluation reserve<br>c) Debenture redemption reserve |

| | | |
|---|---|---|
| | | d) Earlier year's reserve brought forward.<br>**Ans. (d)**<br>**Reason:** As per sec. 123, dividend may be declared out of the profit of the company for that year or out of the profits of the company for any previous financial year or years and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government. |
| **2** | **Nov 2016** | The shareholders of the company in general meeting cannot decrease the rate of dividend recommended by the Board of Directors.<br>**Ans.** The given statement is false.<br>**Reason:** As per regulation 80 contained in Table F of schedule I to the Companies Act, 2013, the dividend recommended by the Board cannot be increased by the members in GM, but the rate of dividend as recommended by the Board may be decreased by the members in GM. |

## 3. QUESTIONS FOR PRACTICE

**1)** State any 6 amounts that can be credited to the Investor Education and Protection Fund. Give your answer as per the provisions of the Companies Act, 2013.

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*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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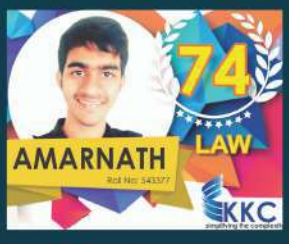




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# CHAPTER 9
# ACCOUNTS OF COMPANIES

## 1. PRACTICAL PROBLEMS

**Concept Problem 1** ***[ICAI SM]***

The Board of directors of Bharat Ltd. has a practical problem. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advise.

**Solution**

According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the Companies (Accounts) Rules, 2014.

Therefore, the Board of Bharat Ltd. is empowered to keep its books of account at its corporate office in Mumbai by following the above procedure.

**Concept Problem 2** ***[ICAI SM] [RTP May 2020]***

The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam, Mr. Hyder (Directors) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.

The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

**Solution**

Under section 134(1) of the Companies Act, 2013 the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

i) The chairperson of the company, where he is authorized by the Board, or 2 directors, one of whom shall be the managing director;

ii) Chief Executive Officer; and

iii) Chief Financial Officer, wherever he is appointed; and

iv) Company Secretary, wherever he is appointed.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

**Concept Problem 3 *[ICAI SM] [RTP May 2018] [MTP May 2020]***

ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2015 were authenticated by two of the directors, Mr. X and Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

a) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.

b) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?

**Solution**

In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

a) The chairperson of the company, where he is authorized by the Board, or 2 directors, one of whom shall be the managing director;

b) Chief Executive Officer; and

c) Chief Financial Officer, wherever he is appointed; and

d) Company Secretary, wherever he is appointed.

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

a) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

b) In case of OPC, the financial statements should be signed by one director and so, the authentication is in order.

**Concept Problem 4 *[ICAI SM] [ICAI Nov 2018]***

A Housing Finance Ltd. is a housing finance company having a paid-up share capital of INR 11 crores and a turnover of INR 145 crores during the financial year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode.

**Answer**

**Filing of financial statements in XBRL Mode**

As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

i) companies listed with stock exchanges in India and their Indian subsidiaries;

ii) companies having paid up capital of five crore rupees or above;

iii) companies having turnover of one hundred crore rupees or above;

iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian

Accounting Standards) Rules, 2015.

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sectors are exempted from filing of financial statements under these rules.

Hence, A Housing Finance Ltd., being a housing finance company, is exempted from filing its statement in XBRL mode.

**Concept Problem 5 *[ICAI SM]***

Mr. Bhagvath, recently acquired 76% of the equity shares of M/s Renowned Company Ltd., in the hope of earning good dividend income. Unfortunately, the existing Board of Directors have been avoiding declaration of dividend due to alleged inadequacy of profits. Unconvinced, Mr. Bhagvath seeks permission of the Company to allow him to examine the Books of Accounts, which is summarily rejected by the Company. Examine and advise the provisions relating to inspection of Books of Accounts and remedy available.

**Solution**

**Inspection of Books of Accounts of the Company (Section 128 of the Companies Act, 2013)—**

Mr. Bhagvath has no right to carry out an inspection of the books of accounts of the company despite the fact that he holds 76% of the equity shares of M/s Renowned Company Ltd. According to sections 128(3) and 206 of the Companies Act, 2013, following persons have the right to carry out the inspection of the books of accounts of the company.

a) Directors of the Company [Section 128(3) of the Companies Act, 2013]

b) Registrar of Companies [Section 206 of the Companies Act, 2013]

c) Such officer of Government as may be authorised by the Central Government in this behalf

d) Such officers of SEBI as may be authorised by SEBI.

Since Mr. Bhagvath does not fall in any of above-mentioned categories, he is not eligible to carry out the inspection.

**Concept Problem 6 [*ICAI SM] [ICAI May 2019]***

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2017-18 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

**Answer**

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12 th November, 2018 i.e. within 30 days of the date of adjourned AGM.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

**Concept Problem 7 *[ICAI SM] [ICAI Nov 2019]***

Herry Limited is a company registered in Thailand. SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.

**Answer**

Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.
SKP Limited is advised to follow the above procedure accordingly.

**Concept Problem 8 *[ICAI SM] [RTP Nov 2018] [MTP Nov 2020] [ICAI Nov 2019]***

i) Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?

ii) State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.

iii) Whether a Company can keep books of Accounts in electronic mode accessible only outside India

**Answer**

i) According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year.
These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s).

These books of accounts must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.

ii) Persons responsible to maintain books - As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:

   a. Managing Director,
   b. Whole-Time Director, in charge of finance
   c. Chief Financial Officer
   d. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

iii) A Company has the option of keeping its books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

   a. such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.

b. There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

c. The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

**Concept Problem 9 *[ICAI SM] [ICAI May 2019] [MTP Nov 2020]***

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

**Answer**

As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

a) the relevant earlier accounts were prepared in a fraudulent manner; or
b) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.

**Concept Problem 10 *[RTP May 2018]***

Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

| Financial year | Amount (INR in crores) |
|---|---|
| 2012-13 | 20 |
| 2013-14 | 40 |
| 2014-15 | 30 |
| 2015-16 | 70 |
| 2016-17 | 50 |

i) Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.

ii) State the composition of the CSR committee unlisted company and a private company.

**Solution**

Section 135 read with *Companies (Corporate Social Responsibility Policy) Rules, 2014* of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility. As per the given facts, following are the answers in the given situations-

i) **Amount that Company has to spend towards CSR:** According to section 135, of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

ii) **Composition of CSR Committee:** The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.

"Provided that where a company is not required to appoint an independent director under section 149(4), it shall have in its CSR Committee two or more directors."

**Concept Problem 11** ***[RTP Nov 2018]***

Mary Ltd is a listed company having turnover of INR 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company.

**Solution**

In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy.

There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending. Hence, such excess expense will not be counted in subsequent financial years as a part of CSR expenditure.

**Concept Problem 12** ***[MTP Nov 2018]***

The Tribunal has ordered the re-opening of the accounts of MIT Ltd. The directors of the company have approached you to explain to them the provisions of the Companies Act, 2013 in respect of the re- opening of accounts on court's or Tribunal's order.

**Solution**

According to section 130 of the Companies Act, 2013,

a) On Filing of an application: A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.

b) **Nature of Revised Accounts:** The accounts so revised or re-cast shall be final.

c) **Time Period:** No order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

**Concept Problem 13 *[ICAI May 2018]***

Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of 100 crore, net profit INR 3 crore, accumulated loss of INR 50 crore and securities premium INR 300 crore as per the audited accounts of the company for the Financial Year 2016 -17.

The CFO of the company informed the directors of the company that the CSR committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.

**Solution**

**Corporate Social Responsibility Committee:** According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -

(1) net worth of rupees 500 crore or more, or

(2) turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,

- turnover of Rera Ltd. is INR 100 crore,
- net profit of INR 3 crore and
- net worth of INR 253 crore (Net profit + securities premium -accumulated loss = 3 + 300 – 50 = 253 crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

**Note 1: -** It can also by presumed that net profit of the current year has already been considered while calculating accumulated losses.

**Note 2:** Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital.

**Concept Problem 14 *[RTP Nov 2019]***

Yellow limited has prepared its financial statements for the year 2018-19. Mr. Prateek, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same. Now, Mr. Prateek has approached you advise him regarding his responsibility for signing the financial statement. Advise Mr. Prateek regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.

Mr. Prateek has also provided to you the following more informations:

a) The Board as a policy does not authorise the chairperson of the company to sign the financial statements

b) The company has appointed Ms. Sunanina as its Company Secretary

**Answer**

According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorized by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

As per the facts of the question, the Board has not authorized the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Prateek.]

**Concept Problem 15 *[RTP Nov 2018]***

The directors of Element Ltd. want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.

**Solution**

Refer relevant section of the Book.

**Concept Problem 16 *[ICAI May 2018]***

State any four contents of a director's responsibility statement as required u/s 134 of the Companies Act, 2013.

**Solution**

Refer relevant portion in Book.

**Concept Problem 17 *[ICAI Nov 2018]***

What does the term financial statements include in relation to a company under the Companies Act 2013? Which companies need not prepare a cash flow statement?

**Solution**

Refer relevant portion in Book.

# ARISE AWAKE AND STOP NOT TILL YOUR GOAL IS ACHIEVED

*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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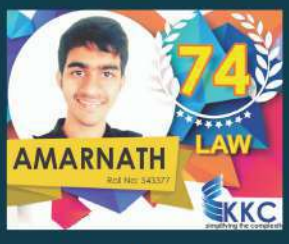




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# CHAPTER 9
# AUDIT AND AUDITORS

## 1. PRACTICAL QUESTIONS

**Concept Problem 1 *[ICAI SM]***

State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:

a) Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.

b) Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.

**Solution**

a) Section 139(6) of the Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

i) Inform the members of the Company;
ii) Immediately take steps to convene an extra ordinary general meeting not later than 90 days;
iii) Members shall at that extra ordinary meeting appoint the first auditors of the company;
iv) The first auditors so appointed shall hold office upto the conclusion of the first AGM of the company.

b) Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with rule 7 of the Companies (Audit & Auditors) Rules, 2014 the following steps should be taken for the removal of an auditor before the completion of his term:

i) The application to the Central Government for removal of auditor shall made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

ii) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

iii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

**Concept Problem 2 *[ICAI SM]***

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj a qualified Chartered Accountant was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2016 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act 2013. Decide, whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

**Solution**

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

**Concept Problem 3** ***[ICAI SM] [RTP May 2019] [RTP May 2020] [RTP Nov 2020]***

EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2016. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15th October, 2016. But Naresh & Company continues to function as statutory auditors of the company. Advice

**Solution**

**Disqualification of auditor:** According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ` 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2016 i.e. after the investment made by his wife in the equity shares of EF Limited.

**Concept Problem 4** ***[ICAI SM] [RTP May 2018] [MTP May 2019] [MTP Nov 2019]***

Explain how the auditor will be appointed in the following cases:

i) A Government Company within the meaning of section 394 of the Companies Act, 2013.

ii) The Auditor of the company (other than government company) has resigned on 31st December, 2016, while the Financial year of the company ends on 31st March, 2017.

iii) A company, whose shareholders include the following:

   a) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.
   b) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.
   c) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

iv) A Public Company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.

**Solution**

i) The appointment and re-appointment of auditor of a Government Company or a government-controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

ii) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

iii) The Companies Act, 2013 categorizes companies into government companies and non-Government Companies and lists down the provisions relating to appointment, of auditors as per this classification. Hence, in the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

iv) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

1. The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

2. Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

   Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

**Concept Problem 5 [*ICAI SM] [MTP May 2019] [MTP May 2020]***

Examine the following situations in the light of the Companies Act, 2013

a) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.

i) "Mr. A", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of Rs. 900/-. Whether Mr. A is qualified for appointment as an Auditor of "XYZ Ltd."?

ii) "Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of Rs. 90,000/-. Whether "Mr. P" is Qualified from being appointed as an Auditor of "ABC Ltd."?

**Solution**

**a)** **Provisions and Explanation:** Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

**Conclusion:** In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

**b)** According to section 141 (3)(d) (i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. A. is holding security of Rs. 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

**c)** As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of Rs. 90,000 face Value in the ABC Ltd., which is as per requirement of proviso to section 141 (3)(d)(i), Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

**Concept Problem 6** ***[ICAI SM]***

The auditors of a company refuse to make their report on the annual accounts of a company before it is signed on behalf of the Board of directors. Advise the company.

**Solution**

The auditor is right. Theoretically, accounts are presented to auditors only after they are approved by the Board and signed by authorized persons. The auditor is only expected to submit his report on the accounts presented to him for audit after conducting an examination of the necessary documents, analysing relevant information and test checking accounting records in order to be able to form an opinion of the financial statements presented to him.

In practice, the checking of accounts is already completed before accounts are approved by the Board. Auditor informally approves the draft account with notes etc., before the accounts are approved by the Board. However, auditor signs the accounts only after these are approved by Board and signed by persons authorized by Board of the company.

**Concept Problem 7** ***[ICAI SM] [ICAI Nov 2019]***

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who i s a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of INR 70,000/- (market value INR 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company:

(ii) Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for INR 6 lacs. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.

(iii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

**Answer**

i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of INR 1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of INR 70,000 (market value INR 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of INR 5 Lacs.

In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for INR 6 lacs.

iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person who's relative is a director or is in the employment of the company as director or key managerial personnel.

In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

**Concept Problem 8** ***ICAI SM] [ICAI May 2019]***

The Board of Directors of a Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as a Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

**Answer**

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

**Concept Problem 9** ***[ICAI Nov 2018] [RTP Nov 2018]***

Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of INR 75000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013.

Would your answer be different if face value of the shares has been INR 150000/- (market value INR 95000/-)?

**Solution**

As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, shall not be appointed as an auditor of the company.

However, Rule 10 of the Companies (Audit and Auditors) Rules, 2014, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh.

In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of INR 1 lakh, such a transaction is valid.

Yes, the answer will be different in case where the face value of acquired shares is INR 1,50,000. Then in that case:

i) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or

ii) Auditor has to vacate his office.

**Concept Problem 10 *[ICAI Nov 2018] [RTP Nov 2018]***

Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA L, CA M and CA N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.

CA M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013:

a) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?

b) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?

c) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?

d) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?

**Solution**

**According to Section 139 (2) of the Companies Act, 2013,**

i) Listed companies and other prescribed class or classes of companies (except one-person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.

ii) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

iii) Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.

iv) For the purpose of rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held off ice as auditor prior to the commencement of the Act shall be considered for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

a) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.

b) The cooling- off period shall be of 5 years.

c) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.

However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.

d) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Accordingly, M/s Lemon & Company can be appointed as an internal auditor of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

**Concept Problem 11 *[MTP Nov 2018]***

Examine the validity of the following with reference to the provisions of the Companies Act, 2013: -

a) Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place?

**Solution**

**a) Removal of first auditor:** Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

**Concept Problem 12 *[MTP Nov 2018]***

Mr. Honest, an auditor of MM company ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner.

**Solution**

**Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5) of the Companies Act, 2013].**

**On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.:** Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, i t may, by order, direct the company to change its auditors.

**Requirement for change of auditor:** If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

**Concept Problem 13 *[ICAI May 2018]***

Rupa Limited, a listed company appointed M/s. VG &ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30 -09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.

**Solution**

**Tenure of Auditor:** Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one-person companies and small companies) shall not appoint or re-appoint-

(1) an individual as auditor for more than one term of five consecutive years; and

(2) an audit firm as auditor for more than two terms of five consecutive years.

Cooling off Period:

1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

**Concept Problem 14 *[ICAI May 2018]***

PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?

**Solution**

Before any appointment of auditor is made, the auditor shall furnish to the company his written consent for such appointment; and a certificate that-

i) the appointment, if made, shall be in accordance with the conditions as may be prescribed; and

ii) the auditor satisfies the criteria provided in Sec. 141.

The auditor proposed to be appointed shall submit a certificate that-

a) the individual or the firm is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made there under;

b) the proposed appointment is as per the term provided under the Act;

c) the proposed appointment is within the limits laid down under the Act;

d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect of professional matters of conduct, as disclosed in the certificate is true and correct.

Mr. Praveen Kumar, the proposed auditor has t give the above certificate to the Company before accepting the appointment as auditor of PKC Limited.

**Concept Problem 15 *[ICAI May 2019]***

The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the FY 2017-18 were placed at its annual general meeting held on 31st August, 2018.

However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

**Answer**

According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

**Concept Problem 16 *[MTP Nov 2020]***

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Vikas, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2020 by an ordinary resolution. Mr. Mukesh, a shareholder of the Company, objects to the manner of appointment of Mr. Vikas on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Mukesh is tenable? Also examine the consequences of the above appointment under the said Act.

**Answer**

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors.

The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Mukesh is not tenable. The appointment is valid under the Companies Act, 2013

# ARISE AWAKE AND STOP NOT TILL YOUR GOAL IS ACHIEVED

*-Swami Vivekanand*

## About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.



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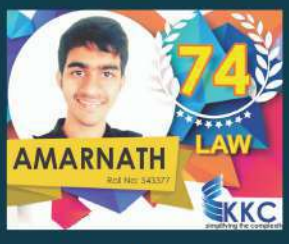




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